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Skillful women and jurymen: Gender and authority in seventeenth-century Middlesex County, Massachusetts

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SKILLFUL WOMEN AND JURYMEN: GENDER AND AUTHORITY IN
SEVENTEENTH-CENTURY MIDDLESEX COUNTY, MASSACHUSETTS

BY

EDITH MURPHY
Bachelor of Arts, Bowdoin College, 1984
Master of Arts, University of New Hampshire, 1990

DISSERTATION

Submitted to the University of New Hampshire
in Partial Fulfillment of
the Requirements for the Degree of

Doctor of Philosophy

in

History

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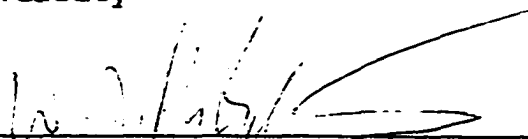
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For My Parents
Marion Rose Murphy
John F. Murphy

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ABSTRACT

SKILLFUL WOMEN AND JURYMEN: GENDER AND AUTHORITY IN SEVENTEENTH-CENTURY MIDDLESEX COUNTY, MASSACHUSETTS

by

Edith Murphy
University of New Hampshire, September, 1998

Through analysis of about one thousand cases that appeared before the Middlesex County, Massachusetts, court between 1649 and 1679, this dissertation asks how authority, derived from patriarchal power, operated on the day-to-day level in colonial New England society. It argues that women were integral to colonial communities and to the effective maintenance of social order. While gender determined the roles people played in colonial society, and women were subordinate to their husbands and fathers, women and men shared agency in efforts to maintain social order.

The dissertation begins by tracing the process by which cases came to the county court, describing the judicial system and its links to the informal social control that occurred in communities. Examining those communities, it concludes that both women and men had prominent roles in community networks, working to resolve conflicts and control behavior. Turning next to the specific roles that women played in the day-to-day regulation of behavior, it argues that white, middle-status, and middle-aged or older women

held significant authority in Middlesex county's patriarchal culture as mothers and mistresses, as neighbors, and as midwives and skillful women, who inspected other women's bodies for signs of witchcraft or pregnancy and childbirth. Women were thus critical to the enforcement of the gender and racial hierarchy.

A close look at two towns enmeshed in conflict reveals that disruption spread among the interdependent levels of the society: the male realms of town, county, and colony government; the realms males shared with females, household and community; and the female-watched realm of sexuality. As Middlesex rulers perceived a loss of order in the 1660s and 1670s, they responded with an increased effort to control behavior through gendered authority. Fornication cases, laws, and family government prosecutions demonstrate that the county court and colony government emphatically reiterated the commitment to gendered authority. However, an increasing reliance on minor male officials may have incidentally de-emphasized women's informal roles in a foreshadowing of future changes.

INTRODUCTION

When Elizabeth Mousall forbade Thomas Turrill from keeping company with her sixteen-year-old maid Sarah Lawrence, he responded by bringing his friend John Fosket "with a great stick in his hand" to her house. Fosket called her jade and whore and agreed when Turrill told her that "she had medled with that which she had nothing to doe with, in forewarning of him of her maides company." Three times Elizabeth told Turrill and Fosket to leave, but they refused. The young men continued their assault on authority when Elizabeth's husband John arrived. He also commanded them to leave two or three times, to which Fosket replied "that hee would not goe out saying hee had as much to doe In the house as" John himself. When John tried to lead Fosket out, Fosket hit him with his stick. John threw him out into the yard. Fosket responded by attacking him, while another young man held Turrill back. When Elizabeth joined the fray to protect her husband, Fosket "struck her downe in her yard and tore the Cloathes of her neck . . . saying she was a lyar."¹

¹June, 1663. Elizabeth Mousall also confiscated Turrill's book, *The Expert Midwife*. Testimonies of Paul Wilson, John Mousall, and Elizabeth Mousall, Middlesex County Court folio files, Massachusetts State Archives, Boston, file 34 (hereafter cited as file 2); David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 4 vols., Massachusetts State Archives, Boston, 1:286 (hereafter cited as Pulsifer). Two more court actions grew out of the antagonism between these people. In September the Mousalls appeared before Richard Russell to complain of their

When Elizabeth fled to complain to a magistrate, Fosket "bad her goe for the divill was at her left hand." Once ejected from the Mousall's yard, Fosket stood outside threatening Mousall, hurling insults at him, and daring him to come out himself. At the Middlesex County court on the following day Fosket and Turrill were convicted of "violence used, agt John Mousall & his wife, in their owne house, & using sundry scurrilous and reproachfull expressions, and the said Tirrill of making love to ye mayd servant without orderly leave." The court fined Fosket forty shillings and Turrill £5.²

This story is about the disruption and restoration of authority. It highlights the two predominant arguments I make regarding Middlesex County, Massachusetts in the mid-seventeenth century. First, I argue that women's exercise of authority was central to the preservation of order. Here a young dame, only thirty years old, attempted to regulate both her maid and the young man who came courting her. Women and men worked together to control behavior and their authority was interwoven in the household and in the community. John Mousall stepped in to help his wife, throwing Fosket out of

house having been ransacked (during a search for Turrill's missing book); no record of a decision survives, file 34. In October the Mousalls and Fosket charged and countercharged slander and battery. The case was withdrawn by consent of both parties, Pulsifer, 1:291.

²Fosket lived with his wife's parents, which may explain his anger at the independent Mousall household. Turrill was servant to Fosket's father-in-law.

the house. Conversely, she went to his aid in his fight with Fosket, running to the magistrate when he was trapped in his yard by Fosket. Second, the dissertation argues that formal and informal levels of authority were interdependent and contiguous. Community members enforced laws and were in turn supported by the court. Elizabeth Mousall upheld the colony law against courting a maid without permission "from her parents or Governours."³ In fining the men, the court in turn sustained the Mousalls' authority, he to rule his household, she to control her maid.

The Middlesex records are particularly fertile ground for studying gender and authority. While some of the richest sources available for colonial New England history, they have been used less than other records because they have not been printed and are difficult to read and organize. Fifty years ago Edmund Morgan used them effectively to study the Puritan family.⁴ More recently, Roger Thompson has explored the records in his study of popular mores.⁵ Using their own

³*The Colonial Laws of Massachusetts. Reprinted from the Edition of 1660, with the Supplements to 1672. Containing also, The Body of Liberties of 1641* (Boston, 1889), 172. The required fine for this offense was £5.

⁴Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (Boston: 1944; revised ed., New York: Harper and Row, 1966). See also "The Puritans and Sex," *New England Quarterly* 15 (1942): 591-607.

⁵*Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699* (Amherst: University of Massachusetts Press, 1986). Eli Faber also used the Middlesex records in "The Evil That Men Do: Crime and Transgression in Colonial Massachusetts," (Ph.D. dissertation, Columbia University, 1974) and "Puritan Criminals: The Economic, Social, and Intellectual Background

words, Thompson tells rich stories about the people of Middlesex. Rejecting an image of the stern patriarch and downtrodden family that he draws from Lawrence Stone's work, he reveals that many challenges to absolute patriarchy occurred in Middlesex, and argues that patriarchs did not exercise complete repressive control over wives, children, and servants.⁶ While he paints vivid pictures of life in Middlesex, his work is weakest in terms of gender. He does not analyze defendants by their sex, or consider the way in which gender gives meaning to his story. His focus on the rather monolithic picture of the patriarch prevents him from exploring fully the place of other members of Middlesex society in the patriarchal system. This dissertation aims to add to our understanding of the cases presented by Thompson by concentrating on the ways gender, age, status, and race illuminate misbehavior and its treatment.

In asking how authority operated on the day-to-day level in colonial New England society, I address two bodies of literature, women's history and legal history. Turning first to women's history, I argue that gender is fundamental to our understanding of the contributions of both women and men to the construction of authority in Middlesex county. Men of

to Crime in Seventeenth-Century Massachusetts," *Perspectives in American History* 11 (1978): 83-144.

⁶Lawrence Stone, *The Family, Sex, and Marriage in England, 1500-1800* (New York: Harper and Row, 1977); Thompson, *Sex in Middlesex*, xv-xvi.

middle status, with their roles as jurors and petty officials, embodied the connection between the formal arena of the court and the informal arena of community where people controlled behavior every day. Derived from their positions as household heads, men's authority was limited outside the family through interaction with men who held equal or greater authority. Women's authority within the community also derived from their position in the household, as deputies to their husbands, as mothers, and as mistresses.⁷ Their limited formal roles as experts regarding women's bodies grew out of their responsibility over sexuality and experience with healing and in the birthing room.

Mary Beth Norton uses court records in her path-breaking treatment of colonial America to demonstrate how gender was fundamental to constructions of power in both New England and the Chesapeake. Tracing gendered power in the family, community, and state in New England, Norton describes a unified theory of power resting on the father's "governance of subordinates" that she calls Filmerian after Robert Filmer, author of *Patriarcha*.⁸ I take issue with Norton in two areas. First, I disagree with the way she sets women up

⁷For deputy husbands see Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750*, (New York: Oxford University Press, 1982), 35-50.

⁸Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), 8, 10; Ulrich used court records, among other sources, to study women's daily lives in *Good Wives*.

in opposition to men. Second, I suggest that New England women's religion is important in understanding their motivations, both in supporting the social order and in disrupting it.

Norton depicts the Filmerian system as being fundamentally at odds with itself in terms of gender. This view results from her focus on the dyad of father/child. But the dyad of parent/child was also critical in New England's hierarchical system. As Edmund Morgan demonstrated in *The Puritan Family*, women were joined with their husbands in governing their families.⁹ She argues that it was a problem that women, due to their "authority within the family" could not "be wholly excluded from the category of those who wielded power in the society at large."¹⁰ It was a problem that women could be widowed and thus at one stroke be deprived of, and become, family governors. Finally, it was a problem that "high-status women took precedence over low-status men." But were these really problems for seventeenth-century people? Not, I argue, in Middlesex County. Its inhabitants expected that women's authority would help cement communities together, and that widows, like those described by John Cotton (see chapter 3), would contribute to church and community. Norton asserts that when these three "problems" existed together, they created women who were

⁹Morgan, *The Puritan Family*, 45-46, 106-108.

¹⁰Norton, *Founding Mothers and Fathers*, 10.

particular threats to the Filmerian social order. In contrast, the Middlesex County court records reveal high-status widows like Susan Johnson who, as we will see in chapter 5, came into view only when they enforced community standards.

While women like Anne Hutchinson could come into conflict with government authority and threaten the stability of the society, they shared this potential with high-status men: John Wheelwright and Roger Williams also threatened order. Though, as Norton argues, women like Anne Hibbens may have been lacking in socialization that taught consensus-building, it was not simply because they were women. The failures of consensus-building revealed in Middlesex County in the 1650s were primarily among men, as the stories of Malden and Woburn in chapter 4 show. While women appear in these stories, they share the interests of the men of their families, churches, and towns.

In rejecting the fundamental flaw that Norton finds in her Filmerian construction of patriarchy, I argue that women's authority in New England resulted from a combination of English tradition and Puritan belief.¹¹ Many of the

¹¹For English inheritance see Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Oxford University Press, 1988), 2, 187. "Because of the ideological relationship between family and state, the control of gender disorder symbolically affirmed all social order," 182. She finds that after the Restoration in 1660 the connections between family and society became less important, and order within families was no longer critical to stability. Therefore women's roles became less important. She also focuses on the contradictions that gave high status

Middlesex women who confidently asserted their authority operated from a sense of self steeped in religion. Puritans believed that each individual was responsible for the actions of other people in their community. Keeping watch over neighbors was a religious duty. While Norton has noted the explosive potential of the leadership exercised by women like Anne Hutchinson and New Haven's Anne Eaton, she has not explored the predominance of religion in the motivations of these women.¹² As Mary Maples Dunn has reminded us, radical Protestantism involved new possibilities for women.¹³ While Puritans emphatically supported patriarchal order, they embraced a revolutionary religion. For devout women like Anne Hutchinson, religion was perhaps the only thing important enough to justify opposition to people in authority. However, like Hutchinson, most women shared this concern with men. In chapter 4 I describe a group of Puritan women in Malden who, as allies of the men in their church, town, and families, battled to determine their own religious practice.

women authority over lower status men resulting from a system of class interacting with a system of gender, 3. For the significant place of women in Puritanism, see Amanda Porterfield, *Female Piety in Puritan New England: The Emergence of Religious Humanism* (New York: Oxford University Press, 1992), 80, 87.

¹²Norton, *Founding Mothers and Fathers*, 359-99, 165-80.

¹³"Saints and Sisters: Congregational and Quaker Women in the Early Colonial Period," in *Women in American Religion*, ed. Janet Wilson James (Philadelphia: University of Pennsylvania Press, 1980), 27-46.

Cornelia Hughes Dayton ties women's history and legal history together in *Women before the Bar*, a study of women and gender in court in seventeenth and eighteenth-century Connecticut. Although she focuses on women in court, while I focus on communities as revealed in court, my study confirms several of her findings for the seventeenth century and suggests their significance beyond the courtroom. She argues that women were central to many of the community concerns that came under the purview of early courts. Courts were more accessible to women than they would become in the eighteenth century. While "Puritan justice" was repressive of women in some ways, it also departed from English practice in providing greater opportunities for their voices to be heard in court, and came close to using a single standard to judge men and women in sexual crimes. In describing changes that occurred in the eighteenth century she writes:

"Connecticut men implicitly signaled that they wished to curb the power of women in the courtroom to challenge and disrupt white men's authority and entitlement." In considering the relationship between the court and community, my work adds another issue for future consideration. Given the importance of white women's authority in maintaining social order on an informal level, how did changes in the court affect or reflect everyday authority?¹⁴

Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789 (Chapel Hill: University of North Carolina Press, 1995), 8, 31, 9-10, 67.

Legal scholarship on colonial America has tended to keep the actions of individuals in their communities separate from the events taking place in colonial courts.¹⁵ From George Haskins, who considered law from the perspective of magistrates and colony courts, to David Konig, who argues that the Essex County court supplanted the community in preserving social order, the dependence of the courts on the actions of both men and women in their daily lives has remained obscure.¹⁶ Konig's assertion that the the communal

¹⁵For surveys of the state of legal history see Stanley N. Katz, "The Problem of a Colonial Legal History," in Jack P. Greene and J. R. Pole, eds., *Colonial British America* (Baltimore: Johns Hopkins University Press, 1984), 457-89; Cornelia Hughes Dayton, "Turning Points and the Relevance of Colonial Legal History," *William and Mary Quarterly* 50 (1993): 7-17; Richard J. Ross, "The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History," *William and Mary Quarterly* 50 (1993): 28-41; and David Thomas Konig, "A Summary View of the Law of British America," *William and Mary Quarterly* 50 (1993): 42-50.

¹⁶George Lee Haskins, *Law and Authority in Early Massachusetts: A Study in Tradition and Design* (New York: MacMillan, 1960); David T. Konig, *Law and Society in Puritan Massachusetts* (Chapel Hill: University of North Carolina Press, 1979). Dayton emphasizes the importance of ordinary people's cooperation with the court, *Women before the Bar*, 4. Other legal histories that shed light on the connections between law and daily life in seventeenth-century New England include: Bruce H. Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill: University of North Carolina Press, 1987); William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825* (Chapel Hill: University of North Carolina Press, 1981); and John M. Murrin, "Magistrates, Sinners, and a Precarious Liberty: Trial by Jury in Seventeenth-Century New England," in David D. Hall, John M. Murrin, and Thad W. Tate, *Saints and Revolutionaries: Essays in Early American History* (New York: W.W. Norton, 1984), 152-206. Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692* (Amherst: University of Massachusetts Press, 1993) provides an overview based on published court

ideal failed obscures the importance of everyday actions and invests a false primacy in the court. In contrast, I argue that the community retained an important place, even when its members relied on courts to enforce social order. Court and community are not easily separated. For example, community leaders provided connections between community and court with the roles they held in court as magistrates, grand jurors and jurors, while witnesses and other court participants were drawn from all levels of the community.

David Hall's study of lay people's practice of religion has shown the importance of ordinary people in making religion what it was in colonial New England. Following his lead, I might call a similar approach to colonial legal history a study of "popular order" or "vernacular law."¹⁷ My intent is to reveal the ways in which ordinary people joined with magistrates and other government officials in creating social order.¹⁸

records, laws, and secondary sources.

¹⁷David D. Hall, *Worlds of Wonder, Days of Judgment: Popular Religious Belief in Early New England* (Cambridge: Harvard University Press, 1990), 5-20.

¹⁸This approach answers in part Terri L. Snyder's call for an "understanding of how litigants understood their rights" and "how individuals understood and interacted with the law," which she makes in regard to the south, but that is also lacking in New England legal history. "Legal History of the Colonial South: Assessments and Suggestions," *William and Mary Quarterly* 50 (1993): 27. For an exploration of law in everyday life, see Hendrick Hartog, "Abigail Bailey's Coverture: Law in a Married Woman's Consciousness," in *Law in Everyday Life*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1993), 63-108.

This dissertation argues that court and community were dependent on each other for support. Maintenance of social order in Middlesex, occurring on a continuum that stretched from household, through community, to courts and government, contrasts with the separation of later American courts from everyday life. Cornelia Dayton demonstrates how increased formality in Connecticut courts made them less accessible to women.¹⁹ Michael Grossberg has shown how nineteenth-century litigants interacting with courts came to reshape their understanding of their disputes due to "the dominant authority of the legal system."²⁰ Scholars like Barbara Yngvesson, Sally Engle Merry, Carol J. Greenhouse, and David M. Engel demonstrate the way twentieth-century citizens interact with court systems and the effects these interactions have on their understandings of the issues they bring to court.²¹

While these authors also argue that laypeople's

¹⁹See Dayton, *Women before the Bar*, for changes in New England courts, 44-68 and passim.

²⁰Michael Grossberg, *A Judgment for Solomon: The d'Hauteville Case and Legal Experience in Antebellum America* (New York: Cambridge University Press, 1996), 239.

²¹Barbara Yngvesson, *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court* (New York: Routledge, 1993); Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990); Carol J. Greenhouse, *Praying for Justice: Faith, Order, and Community in an American Town* (Ithaca: Cornell University Press, 1986); and Greenhouse, Yngvesson, and David M. Engel, *Law and Community in Three American Towns* (Ithaca: Cornell University Press, 1994).

conceptions and uses of the law affects the law, laypeople's interactions occur through the mediation of lawyers and other "gatekeepers."²² In contrast, the power represented by Massachusetts Bay courts during the period studied here was not separate from the rest of colonial society. Courts provided the coercive arm of colonial government, but without the special discourse of English courts or later American courts. The activities of magistrates, deputies, and jurors in courts were connected with their activities in towns, communities, and families, if not seamlessly, then without large discontinuities. Thus seventeenth-century Middlesex is particularly amenable to Austin Sarat and Thomas R. Kearns's approach to law in everyday life. While arguing that law is best understood as both "instrumental" (an outside force) and "constitutive" (a concept-defining inside influence), they reject the attitude of practitioners of each approach who put law first. Instead, they argue that influence moves in both directions between law and everyday life and that this is best seen by studying the "events and practices" of everyday life.²³

I turn now to a description of seventeenth-century

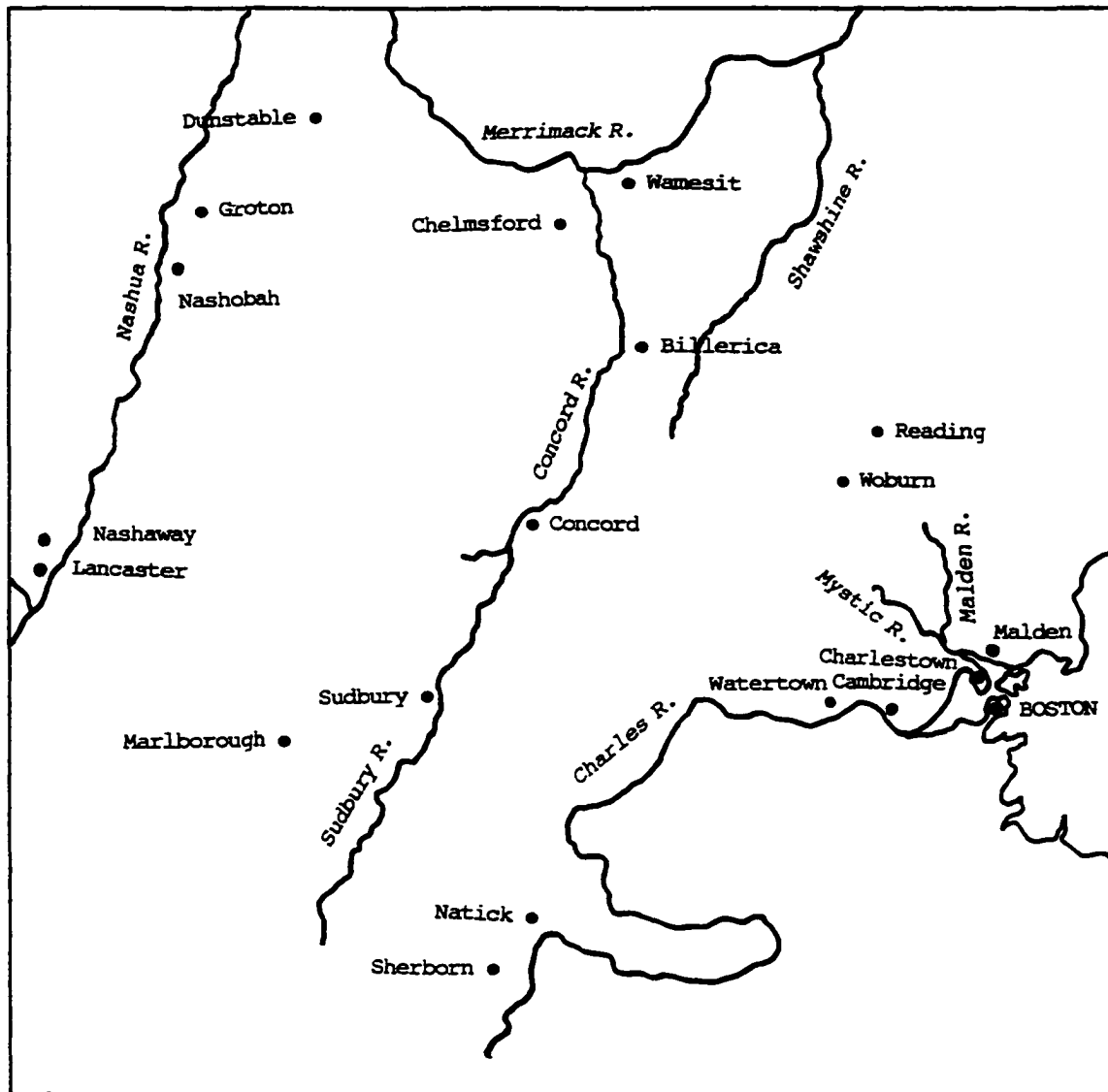
²²Yngvesson, *Virtuous Citizens*, 1-2.

²³Austin Sarat and Thomas R. Kearns, "Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life," in *Law in Everyday Life* (Ann Arbor: University of Michigan Press, 1993), 21-61, quote 56.

Middlesex County and its court records. Physically, the county stretched about thirty miles inland and covered about thirty miles at its widest place from north to south. It formed a wedge with its point at Charlestown, north across the water from Boston. Moving west, Cambridge and Watertown bordered the Charles River. In the northwest part of the wedge were Billerica, Chelmsford and Groton; Lancaster lay on the western edge; and Sherborn formed the southern border. Other towns included Reading, Sudbury, Woburn, and Malden. Population for Middlesex can only be an approximation, but in 1647 it seems to have been somewhere between 2500 and 3000; in 1666 over 5000; and in 1690 over 9000.²⁴ Middlesex included relatively developed areas like Cambridge with its college and Charlestown with its harbor, as well as frontier towns like Lancaster and Concord. County towns were prominent in the founding of Massachusetts Bay. Charlestown was the site of the earliest settlement of Winthrop's fleet. Watertown was one of the two largest towns in the early years. Cambridge, known originally as Newtown, was the site of governor Thomas Dudley's home and his effort to build a

²⁴See Thompson, *Sex in Middlesex*, 12-13, 203-4; Evarts B. Greene and Virginia D. Harrington, *American Population before the Federal Census of 1790* (New York: Columbia University Press, 1932), xxiii, 19-20; Robert Emmet Wall, Jr., "The Massachusetts Franchise in 1647," *William and Mary Quarterly* 27 (1970): 136-44 and "The Decline of the Massachusetts Franchise: 1647-1666," *Journal of American History* 59 (1972): 303-10.

Map 1. Map of Middlesex County, Massachusetts, 1674



single central town for the colony.²⁵

Extensive records survive from the Middlesex County court from the second half of the seventeenth century. The court had jurisdiction over civil and criminal cases, as well as administrative matters. It stood below the General Court and Court of Assistants, which were the colony's highest courts and above the courts held by magistrates or commissioners to end small causes, which were the lowest courts.²⁶ The surviving records include court order books that list the cases brought before the county court and decisions reached. They also include a folio collection of documents relating to the cases: a miscellaneous assortment of papers including statements by witnesses, plaintiffs, and defendants, summonses, warrants, constables' returns, petitions, letters, bills, and attachments. The papers come in many different sizes and shapes, from small scraps to large folios. They are stored in files that can contain hundreds of documents.²⁷ They are only loosely clustered by

²⁵Darrett B. Rutman, *Winthrop's Boston: A Portrait of a Puritan Town, 1630-1649* (Chapel Hill: University of North Carolina Press, 1965), 26-30.

²⁶Joseph H. Smith, ed., "Introduction," *Colonial Justice in Western Massachusetts (1639-1702): The Pyncheon Court Record* (Cambridge: Harvard University Press, 1961), 65-73. See chapter 1 below.

²⁷In the 1930s Works Project Administration employees made lists of the cases dealt with in each folio file (though they overlooked some documents) and wrote notes explaining the documents. The court order book for 1663 to 1671 was burned in a fire in 1671, Pulsifer, 3:3. Both the folio files and the court order books (originals and David Pulsifer's nineteenth-century transcripts) are available on microfilm.

date and court action. Often papers pertaining to a single case are scattered through several files.

This dissertation uses a database of about a thousand cases drawn from the Middlesex records for 1649 to 1679. It includes every case or issue mentioned in the county court records for the period between 1649 (the date of the first surviving records) and the end of 1660. In addition to these 785 cases, I have selected 214 more from 1661 to 1679 that focus on situations involving women and issues around family government. The "cases" from the first twelve years of the court include 377 civil and 144 criminal cases that the court decided, as well as 264 orders the court made on various administrative issues such as appointing officials and building and repairing roads and bridges. One hundred and fifty-nine of the civil suits were for debt. Civil suits include slander cases and some assault cases where the victim came to court as a plaintiff. The numbers also include grand jury presentments or cases initiated by plaintiffs that were not recorded as being heard at the county court but appear in the folio collection. About 2300 people were involved in these thousand cases and appear in the data base.

Recording all actions and participants in the first twelve years of the county court proved time consuming, but it had several advantages. Due to the scattered nature of the files, documents associated with cases have been

The originals are now too fragile to be used.

overlooked in the past.²⁸ The method also allowed me to see every involvement of a particular individual with the court during the period. In addition, by looking at what the court actually dealt with instead of focusing on types of cases, or only women, I was constantly reminded of the wide variety of issues that were important to Middlesex inhabitants. Debt and bridge repair were often more important than fornication or slander. It also prevented me from losing men's experience or making incorrect assumptions about it through focusing on women's experience. Finally, it allowed me to see patterns of community behavior that appeared in widely diverse cases. For example, Woburn's troubles, discussed in chapter 4, ranged from sexual misbehavior to disputes over the boundaries of land in a probated estate.

The relative rarity of women in court highlights that it was a male domain, but also contrasts with the immense amount of detail about women's lives and their communities that is available in the records. Thirteen percent of the people involved in civil and criminal cases between 1649 and 1660 were women.²⁹ Women were plaintiffs alone or with other women in just four percent of the cases and appeared with men in another three percent. They were sole defendants or appeared

²⁸E.g. Roger Thompson's treatment of Sarah Bucknam in *Sex in Middlesex* left out a Charlestown church elder's statement regarding her behavior, 177-180. See chapter 4 below.

²⁹Dayton found a much higher proportion of one third for early New Haven county, *Women before the Bar*, 3. She does not specify the exact period.

with other women in four percent of cases and joined with men in an additional six percent. In all, women were involved as witnesses, plaintiffs, defendants, or victims in just twenty-six percent of the issues heard before the county court.

I use town and church records, genealogies, probate records, and records from other colony courts to supplement the stories revealed in the county court records. The context provided by age, family composition, wealth, office holding, and occasional information about the spatial arrangements of settlements allows the creation of a more thorough picture of communities. It also sheds light on the formal workings of the court.

To make the pages that follow clearer, I want to explain how I use several terms. Although the word patriarchy does not explicitly include women's familial power along with men's, I use it to refer to the gendered hierarchical organization of households and of the state.³⁰ Here patriarchy does not mean simply the dominance of men over women, because people of both sexes owed deference to fathers in households and rulers in the state. I want to emphasize

³⁰See Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, University of North Carolina Press: 1996), 3-5, 15-17, 322-24 and Sherry B. Ortner, *Making Gender: The Politics and Erotics of Culture* (Boston: Beacon Press, 1996), 15. Norton avoids using the word patriarchy but notes that all secular authority was based on the father's power over his subordinates, *Founding Mothers and Fathers*, 8-13, 413n.

that the system's reliance on household government gave an important place to the mother and mistress of the household. Women's subjection to men was not anomalous because all people owed obedience to those above and responsibilities to those below them in the hierarchy.³¹

In the following chapters I use the term order to indicate both this seventeenth-century English conception of hierarchical order and the related goal of smooth running families, communities, and towns. Maintaining social order in Middlesex did not mean that disruptions, disputes, and wrongdoing did not occur, but only that Middlesex people worked to contain and resolve them. In exercising social control, they made and remade their "ordered society" every day.³²

To clarify the roles of ordinary people in maintaining social order, I differentiate between the terms authority and power. Authority refers to a generally acknowledged right to give commands or take action, both the formal authority of officials and the informal authority wielded by many community members. While power denotes the ability to

³¹Morgan, *The Puritan Family*, 17-21; Perry Miller, *The New England Mind: The Seventeenth Century* (Cambridge: Belknap Press, 1939), 240; Lewis Perry, *Intellectual Life in America: A History* (Chicago: University of Chicago Press, 1984), 48-50; Ulrich, *Good Wives*, 8; and Norton, *Founding Mothers and Fathers*, 198-99.

³²Donald Black, *The Social Structure of Right and Wrong* (New York: Academic Press, 1993), 4; see Amussen, *An Ordered Society*.

determine the actions of others either legitimately or illegitimately, authority indicates a limited power that was normally recognized both by those who wielded it and those on whom it was wielded.³³ The phrase gendered authority emphasizes that the authority of parents, governors, and magistrates was based on the understanding of patriarchal authority as modeled on the family. Authority was limited by others' authority, by laws, and by traditional usages. Ordinary husbands, like their wives, were accustomed to wielding a circumscribed authority, subject to more influential men. Men were even limited in certain situations by the authority of women who held sway at birthings and over the sexual behavior of young women.

I use the word community to describe groups of people tied together by one or more of the following: location, local political ties, affiliation with a church, and connections made in providing for various needs like childbirth and the purchase or exchange of necessities. This loose definition allows for membership in more than one community, for stronger and weaker communities, and for stronger and weaker connections of people to these communities.³⁴ For the ordinary people of Middlesex, and

³³See Nicholas Abercrombie, Stephen Hill, and Bryan S. Turner, *The Penguin Dictionary of Sociology* (New York: Penguin Books, 1984), s.v. "authority" and Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: University of North Carolina Press, 1982), 132, 135.

³⁴For discussions of community in colonial history see Darrett B. Rutman, "Assessing the Little Communities of Early

particularly women, who stayed closer to their homes, the community with the strongest ties was that composed of people in the immediate neighborhood. But here as well, communities were not strictly delimited, people who lived further away would also have connections, as would people with relationships within the neighborhood who lived elsewhere. Thus the people of Middlesex continuously constructed their communities through their actions in a process of change and motion.³⁵ They brought to these actions ideas about how community should work that were grounded in the various types of English communities that they, or their parents, had experienced, in their Puritanism, and in their experiences in New England.

Communities were composed of families, households, and neighborhoods, and were arranged into networks of people. Family here describes people related by blood or marriage, often living together in a household. A household was usually a nuclear family and dependents like servants and apprentices living together in the same house. Occasionally,

America," *William and Mary Quarterly* 43 (1986): 163-178, esp. 178; "Community Study," in Darrett B. Rutman with Anita H. Rutman, *Small Worlds, Large Questions: Explorations in Early American Social History, 1600-1850* (Charlottesville: University Press of Virginia, 1994), 40; and Darrett B. Rutman and Anita H. Rutman, *A Place in Time: Middlesex County, Virginia, 1650-1750* (New York: W. W. Norton, 1984), chap. 1.

³⁵Deborah Winslow suggested this definition, based on Arjun Appadurai, "The Production of Locality," in *Modernity at Large: Cultural Dimensions of Globalization* (Minneapolis: University of Minnesota Press, 1996), 178-199.

more than one household might live in the same dwelling, particularly one divided in a will. Network describes "the system of personal relationships" in which individuals were involved and traces the connections made by those interpersonal relationships.³⁶ I use neighbor and neighborhood to describe people who lived near each other and the area where they lived.

The terms formal and informal describe a separation that would have seemed foreign to the people of Middlesex. Living in a culture that depicted the world as a great chain of being, colonists expected relationships to exist in a hierarchical continuum. The gradations between fathers and mothers' authority in households and that of the governor of Massachusetts Bay occurred in easy steps. However, looking at the court records and the forums in which issues were decided, it has seemed important to me to differentiate between actions that were taken in an official capacity and those that were not. Formal refers to the decisions of courts, the testimony of midwives regarding paternity, selectmen's conduct of town business, and constables' and grand jurymen's execution of their duties. The assumption of authority by fathers, mothers, masters, mistresses, and neighbors was usually informal. But parents and masters and mistresses could assert a formal authority over their

³⁶*Dictionary of Sociology*, s.v. "network" and Rutman, "Community Study," 41-52.

dependents, drawn from their legally defined positions, and neighbors who were also officials could act in formal ways as well.

Finally, I often include the titles given Middlesex people in the records. While class is perhaps an anachronistic concept for colonial America, Anglo-Americans differentiated in terms of status.³⁷ Titles are clear indications of the status accorded people and sometimes of the positions they held. Mr. and Mrs. (Mistress) denoted people of high status in a society without nobility. The military title of Captain indicated the town's highest military officer and an acknowledged leader. Goodman and Goodwife referred to ordinary people who had formed their own households. The term master referred to both ordinary and elite men, while dame was often used in preference to mistress in referring to a mistress of ordinary stature.

The following chapters describe the way authority worked in Middlesex county, tracing it on a continuum from households, through informal community networks, and into the formal arenas of town and colony governments and county court. An understanding of the way the county courts worked is basic to the project and chapter 1 traces the process by which cases came to the county court. It describes the judicial system and links it to the informal social control

³⁷See Norton's discussion of this subject, *Founding Mothers and Fathers*, 18-19.

that people exercised in communities. It also develops the connections between the everyday lives of Middlesex inhabitants and the formal legal arena of the county court.

Unlike the county court, the community was not numerically dominated by white men. Chapter 2 examines the ways conflicts were resolved and behavior was controlled in communities. In contrast to the male court, women had prominent roles in community networks, sharing authority with white men. I argue that a consideration of community control of behavior reveals the contributions and investment of a broad range of members. Masters, mistresses, and parents had a great deal of informal authority, but watching and warding were responsibilities of all members of communities. The maintenance of social order occurred on a continuum between the household, community, and court and the three were interdependent.

Chapter 3 turns to the specific roles that women played in the day-to-day regulation of behavior. White, middle-status, and middle-aged or older women held significant authority in Middlesex county's patriarchal culture and were critical to the enforcement of the gender and racial hierarchy. Women had greater or lesser roles in households, communities, and court. In the household, as mothers and mistresses, they exercised control over young people of both sexes. In the community they watched over young people and neighbors. In particular they had responsibility over female sexuality, through neighborly watching, gossip, attendance at

childbirth, and the physical examination of young women who had been attacked or were suspected of sexual misbehavior. Their special vocation in watching over sexuality led to their only formal roles in court: as skillful women and midwives. Skillful women were ordered to inspect other women's bodies for signs of witchcraft, pregnancy, or childbirth. Midwives questioned unmarried women during childbirth and testified regarding who a mother named as her baby's father.

Using the county court records to understand community and gendered authority has meant relying on situations where social order broke down. Chapter 4 takes advantage of this shortcoming by exploring two towns where order was extensively threatened, resulting in a number of cases that appeared before the county court. Stability was shaken in Malden due to the General Court's disagreement with town leaders and in Woburn due to disagreements among the town leaders. I argue that when these disruptions occurred, disorder threatened all areas of the community: the male realms of town, county, and colony government; the realms males shared with females, household and community; and the female-watched realm of sexuality. The interconnections revealed suggest that the colonists' belief that household order was fundamental to order in the state was correct and that the reverse was also true. Order in government was necessary because disruption could flow in either direction. Chapter 4 also shows that ultimately authority in Middlesex

could contain disruptions. The conflict-weakened community networks relied on help from the county court to reestablish social order and the county court relied on community members to bring cases to it and supply testimony.

While this dissertation primarily studies gendered authority as a stable concept, chapter 5 explores it in terms of changes perceived by Middlesex inhabitants between 1649 and 1679. Middlesex county in the middle of the seventeenth century was a society dependant on gendered authority in families and communities. Yet even by 1649 Middlesex people, particularly ministers like Cambridge's Thomas Shepard, were decrying a falling away from the ideals of the original settlers.³⁸ This concern increased throughout the next three decades. Chapter 5 reveals that the initial response of the colony government and the county court to the perceived loss of order was an increased effort to control behavior through gendered authority.

Considering fornication prosecutions, changes or reiterations of laws, and prosecutions of inadequate family governors, chapter 5 argues that the county court and colony government redoubled their commitment to gendered authority in an effort to perpetuate the informal mechanisms of family and community. As fornication increased, the court fought back with increased fines and whippings. In response to a belief that young people living outside family government

³⁸Hall, *Worlds of Wonder*, 172.

were creating disorder, the General Court ordered the counties to enforce the law that all people be required to live under family government. The county court also took increased notice of disorderly families.

An unintended consequence of the General Court's efforts to buttress gendered authority was a deemphasis of women's informal roles. Efforts made by the court to strengthen community authority involved increasing the formalization of roles. In the system of gendered authority only men held official roles, except in the specialized area of sexuality. Laws regarding family government and maintenance of social order relied on minor male officials, making women's authority less central. While women still held their important roles, the court's inability to buttress them may have been the beginning of a process through which they became less important and less definitive.

In the following pages the people of Middlesex appear in great variety and with diverse desires and aims. I have tried to balance an understanding of the choices these people made with a description of the structure in which they lived their lives. My goal has been to illuminate a world where change and continuity resulted from the actions of people, both ordinary and elite, working within the constraints of their culture, but occasionally able to make a difference with the actions they took. As Sherry Ortner has written:

The challenge is to picture . . . structurally

embedded agency and intention-filled structures, to recognize the ways in which the subject is part of larger social and cultural webs, and in which social and cultural "systems" are predicated upon human desires and projects.³⁹

Returning to the story of the encounter in the Mousall house, we see that each individual actor made choices about how to behave. The result was that the Mousalls and the court repulsed a challenge to the embedded and interconnected gendered authority of early New England. The Mousalls acted according to their understanding of authority and the county court upheld them. But the combative Fosket and Turrill may have made Elizabeth Mousall, and perhaps other women, a little more hesitant to exercise their authority the next time a similar situation arose. Conversely, young men resentful of authority wielded over them might take the consequences to these men as a warning against challenging that authority. Taken with many other actions, this incident and the agency taken by its participants contributed to both change and continuity in Middlesex County.

³⁹Ortner, *Making Gender*, 12. She develops the term "serious game" to meet this challenge. See also James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

Note: In quoting from manuscript sources I have kept the original form as much as possible. I have written out some abbreviations as well as substituting u's for v's, i's for y's, and j's for i's where necessary to make the meaning clear. I have also started each year on January 1, rather than on March 25.

CHAPTER I

"I WILL ARAINE YEA AT THE BAR": LAW AND ITS PRACTICE IN SEVENTEENTH-CENTURY MIDDLESEX COUNTY

Perhaps Elizabeth Eames was feeding the chickens, or harvesting a cabbage from the garden, or hauling water on the late summer or early fall day in 1651 when the boy who watched Samuel Eldrid's hogs came to ask which way the animals had gone. Whatever solitary task engaged her, she was able to send him after the hogs to Winotttime Field. What happened then was in dispute. Richard Hildreth charged that the hogs had done a great deal of damage to his corn. Eldrid denied it. In the suit that Hildreth brought before the county court, his witnesses testified that while the boy played in Winotttime Field, the hogs rampaged happily in Hildreth's corn fields. That day Hildreth's son and a servant had chased as many as forty hogs out of the corn three times. But because the boy (never identified by name or age in the records) had run to Richard Eames' house and asked Eames' sister Elizabeth where the hogs had gone, Eldrid argued that the boy had been keeping an eye on them.¹ This case illustrates the strong interconnections between the

¹David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 4 vols., Massachusetts State Archives, Boston, 1:18 (hereafter cited Pulsifer); Middlesex County Court folio files, Massachusetts State Archives, Boston, file 2 (hereafter cited as file 2).

everyday world that included Elizabeth Eames' domestic duties and the formal legal arena of the court that included her appearance and written testimony. These interconnections were an important factor in the experience of colonial people, but they have not been adequately discussed by historians.

This chapter looks at the judicial system from which Hildreth sought redress and links it to the more common methods of community control that appear only incidentally in the court records. Middlesex County was a mainly oral society where most disagreements, disturbances, and moral failings were resolved without going to the county court. Because by its nature oral dispute resolution leaves few records, and very few records from local courts survive, we must rely on county court records to help us understand not only formal civil and criminal law, but the informal ways people controlled behavior and resolved conflicts.

The Middlesex County court had jurisdiction over civil and criminal cases, as well as administrative matters. It stood below the General Court and Court of Assistants, which were the colony's highest courts, and above the courts held by magistrates or commissioners to end small causes, which were the lowest courts.² The court order books and folio documents that survive from the county court provide both the

²Joseph H. Smith, ed., "Introduction," *Colonial Justice in Western Massachusetts (1639-1702): The Pyncheon Court Record* (Cambridge: Harvard University Press, 1961), 65-73.

decisions made by magistrates and jurors and the voices of defendants, plaintiffs, and witnesses of both sexes and all conditions. They include farmers, sailors, and shopkeepers from the busy harbor of Charlestown, college students and servants from Cambridge, and frontier settlers from towns like Concord. These people's words and actions as revealed in their testimony demonstrate their expectation that they would receive justice both from the court and from their communities.

Most of the people of seventeenth-century Middlesex County looked at the judicial system from the bottom up. They knew and understood best those officials who lived within their own towns and neighborhoods: most familiar were jurymen, grand jurymen, constables, and selectmen. Men often played these roles themselves while women and children would know them as neighbors, fathers, husbands, and brothers. Less intimate (for most) but still well-known were the magistrates or, if the town had none, the commissioners to end small causes. As the pinnacle of the town hierarchy, these magistrates and commissioners might be a step away from day-to-day intimacy for the inhabitants who did not live near them, but they were still well-known figures.³ Beyond jurors and magistrates, the structures of justice became less well-

³It is even more likely that the wives of magistrates and ministers were somewhat removed from their neighborhoods, Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1982), 58.

known, especially for women, young people, and those who lived far from the seats of the county court, Cambridge and Charlestown.

Let us take a moment to look at the judicial hierarchy of Massachusetts Bay from the other direction, from the top down: a view that was quite foreign for most Middlesex people and that might have seemed artificial even to the magistrates and deputies who sat on the General Court. By 1649, the year in which the surviving records of the Middlesex County court begin, the judicial process of Massachusetts had had nineteen years to sort itself out. A variety of changing rules had been clarified by law and practice into a hierarchy that would last until the Intercharter period beginning in 1686. At its peak stood the General Court--the court of final appeal for most of Massachusetts' inhabitants and the legislative body for the colony. Those who tried to appeal beyond it were singularly unsuccessful.⁴

The General Court included both elite men as assistants and solid, worthy town leaders who were elected deputies.⁵

⁴Robert Child was treated harshly when he attempted to appeal to English authorities, Edmund S. Morgan, *The Puritan Dilemma: The Story of John Winthrop* (Boston: Little, Brown and Company, 1958), 199-202. Magistrates saw efforts at appeal as acts of civil unrest or even treason, Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692* (Amherst: University of Massachusetts Press, 1993), 77.

⁵Smith, *Colonial Justice*, 376 and George Lee Haskins, *Law and Authority in Early Massachusetts: A Study in Tradition and Design* (New York: MacMillan, 1960), 30.

The court met in the spring and fall and was made up of between ten and fourteen assistants including the governor and deputy governor and one or two deputies from each town. In May of 1650 there were thirty-nine deputies.⁶ The governor, the deputy governor and the rest of the assistants were elected yearly at Boston by all the freemen (see below) of the colony. Those who did not attend the election could vote by proxy.⁷ The deputies were elected by the freemen of the towns and they represented the freemen's interests and voice in the General Court. Beneath this court stood the Court of Assistants, which included the governor, the deputy governor, and the other assistants and met twice yearly in Boston after 1649. The assistants also acted as magistrates in the towns in which they lived.

The colonists who elected the members of the courts were a fairly select group. About half the men over twenty-one in 1647 and a third of them in 1666 were freemen.⁸ According to a 1631 order of the General Court, only members of churches within the colony could be freemen. In 1634 an official oath, in which freemen acknowledged subjection to the

⁶Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England*, 5 vols. (Boston, 1853), 4 (pt. 2):2 (hereafter cited as *Mass. Records*).

⁷*The Laws and Liberties of Massachusetts* (1648; reprint, Cambridge: Harvard University Press, 1929), 20-21.

⁸Robert Emmet Wall, Jr., "The Massachusetts Franchise in 1647," *William and Mary Quarterly* 27 (1970): 136-44 and "The Decline of the Massachusetts Franchise: 1647-1666," *Journal of American History* 59 (1972): 303-10.

government and promised faithfulness and support, was substituted for an older oath.⁹ These requirements changed after the Restoration, in response to a 1664 order from the king. The General Court directed that in addition to church members, men over twenty-four years who were householders and settled inhabitants, who had a certificate of orthodoxy from the minister in their town, and who were certified by the selectmen as owning land that paid at least ten shillings in a county rate could now be freemen.¹⁰

Below the Court of Assistants stood the county courts. In 1649 there were four: Suffolk, Norfolk, Middlesex, and Essex. These courts usually met four times a year, though additional sessions or adjournments (the continuation of a session after a period of time) might be called. Three major types of business came before the county court in the seventeenth century: civil cases where one or more persons sued one or more others, criminal cases, where the county prosecuted one or more malefactors, and administrative business. Administrative business kept the county going: the court appointed, licensed, and ordered tasks done. It granted probate, ensured the maintenance of the ministry, directed the building of roads and bridges, and adjudicated differences between the towns. The county court heard criminal cases and all civil cases with damages of forty

⁹*Mass. Records*, 1:87, 117.

¹⁰*Mass. Records*, 4 (pt. 2):117, 118.

shillings or more, but crimes that involved life, limb, or banishment, as well as divorce cases, went to the Court of Assistants or the General Court.¹¹

The county courts were presided over by three to five magistrates who did not necessarily reside in the county. The court also included jurors, both grand and petit. About a month before the meeting of the county court, the recorder for the court (in Middlesex during this period he was Thomas Danforth) would send to the constable or marshal of each town a notice that he was to gather the town's freemen together "to choose one able and fit man to serve upon the grand jury, also one able and fit man to serve upon the jury for trial of cases."¹² "Able discreet men" were chosen for both positions.¹³ Grand jurymen tended to be older and have strong community positions. Before 1647 jurors had to be freemen. Afterwards they had to be at least twenty-four years old, not have been convicted of "evil carriages" toward the government, colony, or churches, and to have taken the oath of fidelity.¹⁴ The constables would write the names of the

¹¹*Laws and Liberties*, 8-9, 14-15; Smith, *Colonial Justice*, 69-71. The Court of Assistants court order books are missing for the years 1630-1640 and 1643-1673, though surviving papers from the court are printed in the last two volumes of John Noble and John F. Cronin, eds. *Records of the Court of Assistants of the Colony of Massachusetts Bay*, 3 vols. (Boston, 1901-1928. Vol. 1 covers 1673-1692.

¹²File 1.

¹³*Laws and Liberties*, 31.

¹⁴*Mass. Records*, 2:197. The number of jurymen was based on the town's population, 2:285.

men chosen on the back of the notice, sometimes calling the petit jury "the other jury" and return it to the county court, perhaps with one of the jurors traveling to the court. The court met in taverns, alternating between Cambridge and Charlestown.¹⁵ Testimony from the 1670s indicates that once at the court, jurors made their deliberations in a separate room, and that jurors and people involved in cases were not supposed to interact.¹⁶

Twice a year the grand jurors would come together at the county court and make presentments, based on each juror's knowledge of incidents in his own town.¹⁷ The presentments that survive for the 1650s list a variety of cases, ranging from crimes such as doing wash on the Sabbath and slandering the magistrates to the administrative task of calling for the repair of bridges. The grand jury served for a year while trial juries were newly chosen for each court session.

The "jury for trial of cases" that was part of the county court was not, as we might expect, for the trying of criminal cases. In Massachusetts the right to be tried by jury extended only to civil cases and criminal cases that could result in capital punishment or banishment. In all of

¹⁵See order to reimburse Elizabeth Belcher (who kept a public house) for expenses at her house, Pulsifer, 3:104.

¹⁶See complaint of constable John Gore, file 61 and the testimony of James Converse Sr., file 71.

¹⁷*Laws and Liberties*, 31-32.

the non-capital criminal cases tried in Massachusetts to 1660, only four had juries.¹⁸ While juries were usually not used for criminal trials, New England courts gave civil juries more power than they had in English practice. The weakness of juries in criminal cases was probably a result of the strength of magistrates, who headed a criminal justice system that was inquisitorial rather than adversarial (see below). Though Massachusetts inhabitants had the right by law to juries for both civil and criminal trials, the assumption became that the jury was for civil justice, and that magistrates made decisions in criminal cases. John Murrin hypothesizes that civil jury trials allowed for community consensus and the reabsorption of combatants into the community. However, consensus seeking was not the appropriate response to crime. Only repentance was appropriate, and juries trying for consensus and harmony might fail to punish sin, bringing down God's wrath. Also, defendants did not ask for a jury trial because the request would have signaled a lack of contrition that might have brought greater punishment if the defendant was found guilty.¹⁹ Juries appeared regularly at county courts and

¹⁸John M. Murrin, "Magistrates, Sinners, and a Precarious Liberty: Trial by Jury in Seventeenth-Century New England," in David D. Hall, John M. Murrin, and Thad W. Tate, *Saints and Revolutionaries: Essays in Early American History* (New York: W.W. Norton, 1984), 161, 163.

¹⁹"Magistrates saw their role in biblical and inquisitorial terms. Settlers were much more likely to place high value on English protections for the accused." New England's Puritan magistrates punished sin, not just crime. The situation

special juries were summoned for the Court of Assistants when death or banishment were possible punishments.²⁰ At the General Court, the deputies were expected to fill the role of jurors; below the county court, magistrates and commissioners to end small causes tried both civil and criminal cases by summary justice without juries.

Below the county courts were the single magistrate's courts which heard civil cases with penalties under forty shillings and a variety of minor criminal cases. If a town did not happen to have a magistrate, and there were usually only about nine in the colony, it could elect three commissioners "to end small causes" to sit in a quorum of two to hear cases as the magistrates did. In addition to civil cases, they heard cases for refusal to aid constables, contempt toward ministers, absence from church, gaming, failure to pay imposts, innkeeping violations, tippling and drunkenness, lying, pound breaches (the rescue of cattle from the town pound), swearing, and refusals to watch and ward. They also performed marriages, took care of administrative duties, and assisted in the apprehension of offenders. Below the magistrates, town selectmen had some judicial powers as well, particularly in the use of town resources.²¹

changed slowly, particularly after 1660. Murrin, "Trial by Jury," 190, 193, 197-98.

²⁰*Laws and Liberties*, 32.

²¹*Smith, Colonial Justice*, 72-73, 77.

These courts were not the first venue for the settlement of disputes in Middlesex. The body of surviving colonial records of all kinds (court proceedings, laws, town records) can be deceptive, for in colonial Massachusetts most disagreements, disturbances, and moral failings were dealt with before they came to court. Because most of the magistrate and commissioner court records do not survive, we have lost the layer at which most cases that did go to court were resolved. County court cases were, if not rare, unusual, and we must continuously remind ourselves of this as we use them to learn about the day-to-day lives of people for whom the county court was a last resort. Women might never see the court or send it testimony; men would hope to appear there only as jurors.

The English settlers of Middlesex County, Massachusetts had clear ideas about how to deal with conflict and misbehavior in their communities. The smallest action that could resolve the conflict, or put the miscreant right in the eyes of God, was the appropriate one.²² As the cases that

²²Churches discouraged civil litigation, preferring a solution between disputants or a church trial, Emil Oberholzer Jr., *Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts* (New York: Columbia University Press, 1956), 200-207. Hugh Peter wrote that disputes should be handled in communities first before resorting to the court, David T. Konig, *Law and Society in Puritan Massachusetts* (Chapel Hill: University of North Carolina Press, 1979), 18. See also Haskins, *Law and Authority*, 89 and Kenneth A. Lockridge, *A New England Town: The First Hundred Years, Dedham, Massachusetts, 1636-1736* (New York: W. W. Norton, 1970; expanded, 1985), 6, 13.

follow show, people tried to avoid going to court, particularly with their neighbors or family members. One man informed the court: "Right Worshipp^l it is alltogether unpleasant to mee to Contend at Law, Especially with my mother in Law; if possibly I may avoyd it; or to be over troublous to Court or Countrie."²³ Ideally resolution would occur in a discussion between the two people who had a disagreement, or in the case of wrongdoing, the people with authority over the offender would watch and prevent behavior from going too far and would discipline the violator.

Even when cases appeared before a court, the magistrates' goal was to reconcile the parties. When Essex county magistrate Nathaniel Saltonstall heard a case involving a "broil" over the course of a waterway in 1684, he reported that when he had ruled in the case "mutual pardon was begged of each other, and forgiveness declared."²⁴ While conflict and misbehavior resulted in a sense from failures at every level of the community, Puritans expected conflict as

²³Petition of John Sprague, December 17, 1661, file 28. William E. Nelson has shown that in eighteenth-century Plymouth county, Massachusetts, the majority of litigation occurred between people from different communities because people within the same communities were using churches, town government, and informal community methods to resolve disputes, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825* (Chapel Hill: University of North Carolina Press, 1981), 44-52.

²⁴Robert E. Moody, "Records of the Magistrates' Court at Haverhill, Massachusetts, Kept by Nathaniel Saltonstall, 1682-1685," *Massachusetts Historical Society Proceedings*, 79 (1967): 169.

part of the imperfect world. Hierarchies of authority and the community stood ready to deal with problems, and most often they could resolve them without resorting to formal means.²⁵

The case which began this chapter shows a progression from a disagreement between individuals to a case before the county court. The first forum for a dispute was a discussion between the individuals involved. If they could not fix the problem, it moved to the neighborhood, then to the larger community. If the general opinion in the community could not resolve the problem, the next step for a church member was often the church elders, who would attempt to bring peace first by talking to the opponents or malefactors. For civil conflicts, another intermediate step was arbitration by disinterested parties chosen by both disputants. If this had no effect, then the affair would either go before the church or before a single magistrate or the county court. For misbehavior, it might stay before the church or, if the severity warranted, it would go before a single magistrate who could send it to the county court.

²⁵While not all settlers were Puritan, many were, and Puritans had a strong influence over the structure of both formal and informal institutions. See Konig, *Law and Society*, chap. 1; Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (Boston, 1944; revised ed., New York: Harper and Row, 1966), chap. 1; and Gail Sussman Marcus, "'Due Execution of the Generall Rules of Righteousnesse': Criminal Procedure in New Haven Town and Colony, 1638-1658," in Hall, Murrin, and Tate, *Saints and Revolutionaries*, 99-137.

The first recourse for a person with a grievance was to ask the offender to make it right. Evidence of one-on-one efforts to resolve conflicts appears throughout the records, even though for most cases that came to court, these efforts failed. Thus Richard Hildreth began by discussing the damage to his corn with the hogs' owner Samuel Eldrid. Initially, the two men were able to come to an agreement between themselves that Eldrid was responsible for damages to Hildreth's corn. Both agreed to ask neighbors to arbitrate the value of the corn lost.²⁶

Less serious criminal cases often began with a one-on-one interaction between the offender and a family or community member. Part of the evidence against Elizabeth Ball, who was charged with disorderly carriages because of her abuse of her husband and neighbors, included the testimony of fifty-eight year old Sary Mixter. Mixter explained that she had come to Elizabeth Ball's house and asked her how she was feeling and how her sore leg was. Once she had established this sympathetic stand: "I did speake to her about her abuse of Sary Cutting." Ball's outburst in response showed that she was beyond the help of a tactful neighbor, but the interaction demonstrates the way in which community members, both male and female, might work to control behavior in the majority of situations that never came to court. Ideally, Mixter's kindly approach would have

²⁶File 2.

helped Ball see her mistake and reconcile with both her husband and her neighbors.

When a one-on-one discussion between the disputants did not resolve the problem, the community often used quasi-formal structures. A group of neighboring men might meet over a kitchen table as arbitrators or a group of women might come together to decide who was guilty or who was the injured party, long before the involvement of magistrates or the grand jury.²⁷ In cases that involved arbitration, disputants would call on their respected neighbors, perhaps a grand jurymen, or even a magistrate, to hear the two sides of the story. With a few others the men would meet at the neutral territory of a neighbor's house. The arbitrators might decide who was right in a case, or they might, as they did for Samuel Eldrid and Richard Hildreth, just determine how much one owed the other. There was pressure on combatants to accept decisions and to resolve conflicts on an informal level: in his testimony Hildreth complained that even though he had accepted a valuation that he thought was low, in the end Eldrid had refused to pay.²⁸

A conflict between Richard Temple and John Goble provides an example of the range of efforts that could be made to resolve a dispute. In the winter of 1649-50, Richard Temple had a goose that John Goble claimed as his. When

²⁷See chapter 3.

²⁸File 2.

Temple would not give him the goose, Goble and his father, mother, and sister stormed the Temple homestead, ignoring Temple's demand that they stay off. Spurning Temple's offer that they discuss the matter at a neighbor's house, John and Thomas Goble attacked him. When some neighbors came by, the Gobles started trying to take the goose. John's mother Alice Goble got the goose from Temple, and handed it off to her son who ran away with it. Though Thomas Goble threatened Temple that "if my sonne dy within a yeare and day, I will araine yea at the Bar for it," it was the Gobles who were ultimately arraigned, and Temple was vindicated. In April of 1650 John Goble, his father, and his mother were prosecuted at the county court "for a riot" against Richard Temple. Father and son Goble were fined twenty and forty shillings respectively and forced to give bond for their good behavior. Goody Goble was not punished.²⁹

The dispute between Temple and the Gobles had not yielded to discussion between the parties, to neighborhood pressure, or to the intervention of church elders. Any attempts the two men may have made on their own are not recorded in the county court records and clearly failed. Richard Temple attempted to put the problem before a neighborhood venue by moving the Gobles off his land and onto the neutral territory of a neighbor's house. He promised John Goble that if he would go to Goodman Kilcup's house he

²⁹Pulsifer, 1:11; files 4, 7.

would have the goose if it were his.³⁰ Still the Gobles refused to leave.

John Goble's slander of Richard Temple may also have been a kind of appeal to a neighborhood venue. He told two men that Temple was "a lying rascall." But instead of helping him gain allies in his fight with Temple, the accusation resulted in the county court ordering that he pay Temple damages. The two men who had heard him testified against him. While there was some question about Temple's version of events, as will appear below, Goble's bald statement was too extreme to sway opinion in his favor.³¹

Among the efforts made by community members to resolve the conflict between Temple and the Gobles was an appeal to the authority of the church. The church held an intermediary place between the strictly informal purview of the community and the power of the state resting in magistrates and the courts. The role churches played in conflict resolution is somewhat obscured by the paucity of records from the middle of the seventeenth century. However, in his study of church discipline, Emil Oberholzer argues that churches exercised what was actually a "concurrent jurisdiction" with the courts of the civil authorities.³² This was particularly true in matters of property where, it was hoped, church members would

³⁰File 4.

³¹Pulsifer, 1:15; file 4.

³²Oberholzer, *Delinquent Saints*, 201.

do their best to have their disagreements resolved without recourse to the court. Churches frowned on, but did not prevent, litigation among church members. Disputes resolved within the church were dealt with at varying levels of formality. The ideal was that members would resolve conflicts between themselves; if this failed, the church elders might attempt to resolve the problem; and finally, if other efforts failed, the conflict or miscreant would be brought before the church.

We do not know if the church as a whole took action in regard to the dispute between Richard Temple and the Gobles: Thomas and Alice Goble and their son John were members, though Temple was not.³³ Nevertheless, the elders of the Charlestown church met with the disputants in an effort to settle their differences. Church member William Baker's testimony provides a rare glimpse into the way the church attempted to resolve disputes involving its members. Baker testified that the Charlestown church elders, on learning that Thomas and Alice Goble had done some wrongs to Richard Temple, sent for the two Gobles to come to Reverend Zechariah Symmes's house. They also called for Temple and the witnesses to his side of the dispute. Among those gathered were three elders from the church, the town's magistrate

³³Thomas Bellows Wyman, *The Genealogies and Estates of Charlestown, Massachusetts 1629-1818* (Boston, 1879; reprint, Somersworth, NH: New England History Press, 1982), 411, 937 and *Mass. Records*, 1:369 (T. Goble on list of freemen).

Increase Nowell, and future magistrate Richard Russell. Temple accused Goble of having struck him when he was lying face down on the ground. Reverend Symmes asked Temple whether he had seen Goble hit him and if not, how he knew it was Goble. Temple's reply that he had not seen him but had felt him struck Symmes as irrational. Temple's witnesses admitted to Symmes that they had not seen it either. Symmes lectured Temple: "It is just as when children are at hockles & hee that lyes down riseth up & can upon conjecture accuseth one for striking him but indeed knoweth not whether he did or not." The minister's emphasis on clear proof of the accusation, especially in front of Increase Nowell who sat on the county court, gave the proceedings a judicial flavor. In questioning Temple's accusations the minister may have been trying to defuse the situation and give the combatants the opportunity to live in harmony. Whether or not the church elders and minister were harder on Temple and easier on the Gobles because only the Gobles were church members, Temple was able to reject Rev. Symmes's opinion and find the redress he wanted in county court.³⁴

Church discipline was more binding when members met as a congregation to deal with members who were involved with what would have been both civil and criminal cases in the courts.

³⁴File 4 and Wyman, *Charlestown Genealogies*, 47, 927. Baker gave this testimony about the goose dispute in an October 1652 defamation case that Temple brought against Thomas and Alice Goble, see Pulsifer, 1:27.

They heard cases about violations of the Sabbath, drunkenness, doctrinal disputes, violence, sexual crimes, false witness, and property disputes.³⁵ Except in the very worst cases, the ideal of the churches' discipline was to reprimand the sinner and to bring about his or her reintegration into the congregation. Admonitions, suspensions, and even excommunications usually had as their final result the confession and readmission of the miscreant. Like all arms of Puritan justice, the church sought to expunge the sin, not the sinner. While misbehavior had to be punished for the sake of the sinner and of the community (which risked God's wrath if it left sin unpunished), punishment and reintegration into the community was the goal. Temptation and sin were to be expected in an imperfect world inhabited by the devil. It was how the saints dealt with these imperfections that set them off from the rest of the people. Thus the church could offer an alternative to formal courts. Civil conflicts resolved there would not come to secular courts, and miscreants rebuked for minor offenses were often left alone by secular authorities.³⁶

The structure of the Massachusetts judiciary, as outlined above, is fairly easy to reconstruct and understand as it is laid out in the Massachusetts laws. More difficult

³⁵Oberholzer, *Delinquent Saints*, 200-215.

³⁶Oberholzer, *Delinquent Saints*, 28-31.

to discover, but more to the point for the people of Massachusetts Bay, was the process by which cases came before the various courts. How did the immediate problem of hogs in the corn or a surly servant translate into the summonses, testimonies, and bills of charges that eventually came to be deposited with the records of the county court?

When informal methods of resolving a dispute failed, the injured party initiated a civil suit. The plaintiff would take his complaint to the town's clerk of writs or a magistrate, who would issue a summons or an attachment of the defendant's goods and make sure the case was called at the county court.³⁷ Attachments with the defendant's bond for cases that do not appear in the court order book survive for most county court sessions. Issuing an attachment served as a way for plaintiffs to force defendants who wished to avoid court appearances to pay debts or come to some other type of out-of-court settlements. For example, in 1662 John Woodmansey testified that he had sued for debt at the Boston commissioner's court, then "let the action fall" when he received a promise of payment.³⁸

While no records survive regarding the process Richard Hildreth went through in the case of Samuel Eldrid's hogs, indications from other cases are that it might have gone like

³⁷*The Colonial Laws of Massachusetts. Reprinted from the Edition of 1660, with the Supplements to 1672. Containing also, The Body of Liberties of 1641* (Boston, 1889), 138.

³⁸File 38.

this. Hildreth should have begun by approaching Eldrid himself, telling him what had happened and expecting Eldrid to make good the damage done by his hogs. And originally Eldrid did promise to make good, as Hildreth testified:

And the said Samuel freely promising to satisfy the damage done with the penalty of the towne order wch was twelve pence a swine to the plaintiffe, hee being appointed by charlestowne to bee one of the overseeres of the feilds.

But then Eldrid changed his mind: "Yet neverthelesses now the defendant denyeth the pay either the damage done by his swine, or the penalty of the Town order."³⁹ One can imagine Eldrid, with the pugnacity that made him a frequent figure in county court, denying that the damage had been done by his hogs. Did he accuse Hildreth's own hogs, or blame the incident on the negligence of the young men who worked for Hildreth? The record does not say. Whatever Eldrid's attitude, Hildreth would then have turned to the town's clerk of writs. Perhaps it was Samuel Green, who was clerk of writs a year later. Given the amount of the damage (the court eventually awarded forty-five bushels of corn to Hildreth), both men would know that the issue was too big for the single magistrate court and must go to the county court. The clerk wrote out a summons for Eldrid for the next court and each side began marshaling witnesses.

For criminal cases there were a variety of paths to the county court: complaint might come from an individual, the

³⁹File 2.

constable or watch, the grand jurymen, the tithingman (after 1677, see below), an informer, a magistrate, or the town selectmen. In the magistrate court held by the Pynchons in Springfield, the most common way for a criminal case to come to court was by the private complaint of an individual. A 1668 law stated that any person, no matter their age, could "inform and present any misdemeanor to any magistrate, Grand-juryman or court."⁴⁰ Unless there is a surviving grand jury presentment, it is usually impossible to tell from the county court records who brought a complaint to court, though for criminal cases on the county level it is more likely that individuals went to grand jurymen or magistrates, if only because of the distance of the county court and the increased formality in bringing actions at it.⁴¹

Constables or the watches they organized could make complaints or presentments and for minor crimes like drunkenness or night-walking a constable could arrest on his own authority without a warrant.⁴² In these and other ways the constable acted as one of the glues holding together the county court and the town. The county court would send him notices to serve warrants, instructions for the election of jurors, and orders for the carrying out of the court's

⁴⁰Smith, *Colonial Justice*, 130. *Mass. Laws, 1660-1672*, 261a.

⁴¹See chapter 2 for community policing through watching and warding.

⁴²Smith, *Colonial Justice*, 131. Night-walking was being out after dark without good cause.

commands. "And make certain hereof you are not to fail" the court would remind him.⁴³ The duties of the constable were many and varied and over the course of the century it became harder to find men who were willing to be constables because the job took so much time away from their regular work.⁴⁴

Complaints or presentments were often made by other authorities in a town: magistrates or commissioners, selectmen, or grand jurymen. Magistrates or commissioners often referred cases from their courts. Selectmen would become aware of problems in their capacity as town officials, or simply as respected neighbors and citizens. The grand jurymen were natural recipients of the complaints or reports of other inhabitants of their town because of their role in presenting crimes at the county level. Their standing in the community gave them authority in lesser situations that might not even get to court. At the end of the period studied here, in 1677, the General Court established another way for cases to come to court with a law that created the office of tithingman. Tithingmen were respected community members who were chosen to watch over sets of ten neighboring families and had the power to apprehend Sabbath-breakers, disorderly tipplers, and householders who allowed disorder in their houses, both public and private. The selectmen were to

⁴³File 1.

⁴⁴To encourage recalcitrant constables, towns could levy fines for refusing the duty, *Mass. Laws, 1660-1672*, 153, 196.

choose tithingmen from "the most prudent and discreet inhabitants."⁴⁵

Another way for a criminal case to come to the county court was through an informer. In the breach of certain laws Massachusetts allowed part of the fine to go to "the informer," who might be an official like a constable or an individual. These offenses included: making defective casks, exportation of colonial money, gaming in public houses, a maltster selling uncleansed malt, possession of books by certain authors, tavern keepers or others entertaining children, the unlawful use of tobacco, seamen shipping irregularly, selling liquor to Indians, unlicensed trade in furs to Indians, and failure to report the purchase of large amounts of wine.⁴⁶ The list seems long, but it is more remarkable for what it does not include. Most common crimes having to do with moral infractions, theft, or violence did not involve payment to the informer. Nor was there, during the seventeenth century, a disdain for informing. What a twentieth-century sensibility might view as tale-bearing was

⁴⁵Smith, *Colonial Justice*, 134-136. See below, chapter 5. It is hard to measure the effect of this law. The crimes that tithingmen were authorized to apprehend people for would normally have been prosecuted in the magistrate courts and no records from these courts survive for seventeenth-century Middlesex. No tithingmen appear in the first two years of Nathaniel Saltonstall's book, though selectmen and grand jurymen brought cases to him, Moody, "Saltonstall Records." Tithingmen were explicitly mentioned by Pynchon twice in 1685, Smith, *Colonial Justice*, 309, 310.

⁴⁶*Mass. Laws, 1660-1672*, 129, 182, 153, 175, 155, 137, 195, 253, 162, 161, 165; the authors were Reeves and Muggleton.

for seventeenth-century Middlesex inhabitants a demonstration of their commitment and investment in their own community.⁴⁷

In both civil and criminal cases, once a complaint or presentment was received, a warrant, an attachment, or a summons was issued to bring the defendant to court. Warrants and attachments meant that the person's body or goods were attached, while a summons simply ordered that they appear in court. In both the Eldrid and Goble cases, which occurred early in the 1650s, simple summonses were used. From the mid-1650s on, attachments were more likely; Elizabeth Ball was brought to court with an attachment. A warrant for arrest was used for more severe crimes and when a person was thought likely to flee. Attachments were most common for civil cases and usually specified an amount double the damages or debt at issue.⁴⁸ If the defendant in a serious criminal case could not be found, a magistrate could authorize a hue and cry throughout the county and beyond

⁴⁷Edgar McManus (*Law and Liberty*) and David H. Flaherty (*Privacy in Colonial New England* [Charlottesville: University Press of Virginia, 1972]) fail to see the commitment to cohesiveness that was assumed by seventeenth-century individuals, even when it failed. Flaherty is blinkered by his study of privacy--conceived of in a way foreign to seventeenth century people who would not have understood the value he places on the abstract concept. Colonial people did not see the need to punish wrongdoing as priggishness on the part of an "informer" but as public-spiritedness. Flaherty is also careless about the times from which he takes his evidence, ranging over 150 years without taking into account the drastic changes that occurred. See Flaherty, *Privacy*, 206-10, and below, chapter 2.

⁴⁸Smith, *Colonial Justice*, 139-42.

until he was apprehended.

The defendant then appeared before the county court. In civil cases, a jury would listen to the evidence. In criminal cases the defendant would face only the magistrates, witnesses and spectators. Lawyers did not appear in court during this period, though in the 1660s and 1670s they seem to have started drafting some documents for participants. The records do not make clear what exactly an appearance was like, but it is likely that after hearing the charges or complaint read or summarized, the defendant would undergo a judicial examination, having an opportunity to tell his or her story, and would see and hear the witnesses examined. The magistrates and the jury (in a civil trial) were expected to require "due proof" of whatever decision they made.⁴⁹

The magistrates "compiled evidence, prosecuted, questioned witnesses and the accused, judged, and passed sentence." The resulting "combination of severe inquiry and genuine compassion for those who repented placed enormous pressure on the accused to plead guilty and created" a very high conviction rate of around 90 percent in seventeenth-century New England.⁵⁰ In Middlesex county between 1649 and 1660, the conviction rate was 98 percent. However, 31 percent of criminal cases mentioned in the file papers do not have a recorded verdict in the court order book. Many of

⁴⁹Smith, *Colonial Justice*, 146-47.

⁵⁰Murrin, "Trial by Jury," 164.

these are grand jury presentments. It seems likely that magistrates found there was not enough evidence in many of these cases and chose not to prosecute them.⁵¹ Occasionally, as in a 1674 presentment for lying, the defendant may have fled. In answer to an order to issue a summons, Lancaster constable Jonathan Prescott informed the court: "and as for Jon Adams he is gone out of the Colony."⁵² In both civil and criminal cases the defendant would pay costs if found guilty. In civil cases he would pay damages, in criminal cases he would be punished. In the 1650s, punishment was usually a fine, a whipping, or a choice between the two.⁵³

The *Laws and Liberties of 1648* give some information about the witnesses who testified for and against defendants. Magistrates and commissioners were empowered to take testimony in both civil and criminal cases from people who were fourteen or older and were of "sound understanding and reputation." To protect the testimonies from being altered, they were to hold the statements until the court appearance or deliver them to the court recorder.⁵⁴ The testimony was read in court and, if the witness was present, he or she could be examined on it. At first witnesses were allowed to

⁵¹See Marcus for this behavior, "Criminal Procedure in New Haven," 103.

⁵²File 68.

⁵³See chapter 5 for changes in punishment for fornication.

⁵⁴*Laws and Liberties*, 54.

provide spoken rather than written testimony in court, but this turned out to be inconvenient and difficult to record. A 1650 law required that all testimony be presented to the court in writing. Witnesses who lived further than ten miles from the court or were tied to home by illness, pregnancy, or young babies would testify before a magistrate.⁵⁵

Some witnesses took oaths while others did not. If witnesses testifying before a magistrate swore to their testimony, the magistrate wrote "taken upon oath" and signed his name. The witness would sign or mark it. If the witness appearing in court swore to the testimony, it was marked "sworn in court." Usually only witnesses from one side of an issue swore to their testimony, though occasionally both sides would.⁵⁶ New Haven magistrates were hesitant to take oaths for fear of offending God by tempting people to sin by making a false oath. They took oaths only when they were convinced that a witness was telling the truth.⁵⁷ Something of this kind was probably occurring in Middlesex as well.

Witnesses who lived within ten miles of the court and were not disabled or ill were required to appear in court to be examined on their testimony in order for the testimony to be considered in the case. In capital cases, all witnesses

⁵⁵*Mass. Records*, 4 (pt. 1):27.

⁵⁶See, for example, Pulsifer, 1:132 and file 19 for a civil case involving events in Maine.

⁵⁷Marcus, "Criminal Procedure in New Haven," 112-14; Smith, *Colonial Justice*, 146; and Murrin, "Trial by Jury," 175.

had to appear.⁵⁸ In civil cases, the parties were responsible for getting witnesses to appear for them. In criminal cases the witnesses were often summoned, though not always. The summons of witnesses might be found in the attachment of the defendant or in the order to the town to provide jurors.⁵⁹ Witnesses were also to be compensated for their journeys to court, two shillings per day for journeys over three miles and slightly less for shorter trips.⁶⁰

People of other races and ethnic backgrounds who lived in Middlesex were subject to English law. Irish, Scottish, Indian, and African servants living in English households appeared in the county court in a variety of roles. Occasionally French or Dutch men would appear as well. Testimony from all these groups was taken without question, except for at least one instance when the validity of Indian testimony was questioned.⁶¹ In 1663 the court included the phrase "so farr as Indian testimony may be accounted legall & vallid" in the record. The defendant, who refused to confess, was admonished and required to pay the witnesses'

⁵⁸*Laws and Liberties*, 54; Smith, *Colonial Justice*, 148.

⁵⁹See, for example, file 18.

⁶⁰Witnesses were paid one shilling six pence for shorter journeys, *Laws and Liberties*, 54. Note that, unlike wages, reimbursement for appearing in court was the same for men and women.

⁶¹For examples of the testimony of African servants see Francis Flashego's in 1649, file 11 and Margaret's sworn testimony in 1661, file 26.

costs, but not fined the standard amount. The Indians who had testified lived separate from the English and supplied certificates of honesty "& knowledge of an oath" to the court.⁶²

Yasuhide Kawashima makes three rough divisions among Indians in regard to English law. Those outside areas controlled by the English relied on their own systems of justice. Those living in groups among the English, such as those in praying towns and other settlements within the boundaries of the colony, were under the jurisdiction of both English and Indian modes of authority. Finally, members of English households were completely subject to English law.⁶³ These different relationships to English law may explain the suspicion of Indian testimony shown in the case above. The testifying Indians lived outside English households. Because they were not completely subject to English law, the magistrates may have feared that the normal safeguards that worked to ensure truthful testimony might not work for them.

Indians are rare in the Middlesex records. In general, their appearances confirm Kawashima's conclusion that before King Philip's war Puritan authorities took great pains to treat Indians equally under the law, but that their efforts did not translate into equitable treatment of Indians. He

⁶²Pulsifer, 1:286, 301; files 34, 35.

⁶³*Puritan Justice and the Indian: White Man's Law in Massachusetts: 1630-1673* (Middletown: Wesleyan University Press, 1986), 23-35.

argues that unequal treatment resulted from the different perceptions of the law between whites and Indians and the prejudice of many whites.⁶⁴

The basic structure of the county court changed little over the seventeenth century.⁶⁵ But gradual changes in the way the legal system worked were taking place from the moment of the colony's birth. John Murrin argues that with the Restoration in 1660 came increased litigiousness and the demand for jury trials by some defendants for minor crimes. He believes that this change indicated that after 1660 the court was necessary to ensure community harmony.⁶⁶ Appeals were frequent and could be brought without new evidence. "Lawsuits thus threatened to become a bizarre lottery that either party could win, especially if he tried often enough."⁶⁷ Yet as I argue in chapter 5, county court justices and the General Court reacted to changes they perceived by reiterating their commitment to the roles of family and community in maintaining social order. Before 1680 at least, neither leaders nor many ordinary people were willing to

⁶⁴Kawashima, *Puritan Justice and the Indian*, 176-78.

⁶⁵Even the changes of the Intercharter and Second Charter periods brought only small alterations in structure. See Smith, *Colonial Justice*, 79-85.

⁶⁶Murrin, "Trial by Jury," 198. Konig also makes this argument in *Law and Society*.

⁶⁷Murrin, "Trial by Jury," 198-99.

accept changes that threatened the strong interdependence of family, community, and courts. The introduction of tithingmen, which formalized the roles of neighbors, and the reemphasis of the importance of family government demonstrated this commitment. The following chapter explores the community side of these interdependent forums for controlling behavior in Middlesex county, revealing the important roles of all members of communities, even those who spent little time in the county court.

CHAPTER II

THE PRACTICE OF COMMUNITY CONTROL

Chapter 1 reveals the Middlesex County court as a white male space--made up of magistrates, grand jurors, petty jurors, officials, and litigants. White females, Indians, or Africans who appeared as witnesses, defendants, and plaintiffs were in the minority, surrounded by white men, many of whom had greater familiarity with legal processes than they. However, there was another arena where conflicts were resolved and deviant behavior was controlled: the community. Here, in the network of relationships that made up towns and neighborhoods, white men shared space with white women, Africans and Native Americans. Patriarchy defined the social relationships of people in their communities, and people of color occupied the bottom of the hierarchy. But white women, while always subject to husbands, fathers, and magistrates, had clear-cut roles as mothers, mistresses, neighbors, and midwives in which they shared authority with white men. Law and control of behavior occurred on a continuum between the two arenas of court and community. Cases moved between them in a process: communities relied on the court to reinforce control and authority, while the court needed communities to keep watch and present cases.¹ Women as

¹See David T. Konig, *Law and Society in Puritan Massachusetts*

well as men were important in this praxis of control.

This chapter discusses the way behavior was regulated on this informal community level in Middlesex County. Community control, working in concert with more formal methods of control, was fundamental to the maintenance of stability, and each individual had a greater or smaller part to play in contributing to this stability. Most misbehavior was dealt with at a local level, in the family, or in the community networks of neighborhoods and towns. Only unusual cases came before the county court: either because they were too severe to be dealt with informally or because community control had failed or been challenged.

A vocabulary for thinking about the way community networks controlled behavior comes from sociologists' work on social control, a concept which includes everything from a dirty look to using law to curb a person's behavior. Sociologists use the terms social control, informal control, and formal control to describe practices that contribute to social order.² In addition, I use the term community control

(Chapel Hill: University of North Carolina Press, 1979), xiii-xiv, 3, 8. He argues that in England and New England communalism needed support from the legal system, but that this did not necessarily mean communities were not important. He also argues for a weakening of community and church in Essex county after 1660, chap. 4.

²Donald Black, *The Social Structure of Right and Wrong* (New York: Academic Press, 1993), 4. See also M. P. Baumgartner, *The Moral Order of a Suburb* (New York: Oxford University Press, 1988), 5 and Donald Black, ed., *Toward a General Theory of Social Control*, 2 vols. (New York: Academic Press, 1984).

to depict the process by which communities regulated behavior. They did this through community networks, made up of people tied together by their relationships as neighbors and community members. Community networks complemented and supplemented families, which were the first forum for enforcing social norms. Communities became particularly important when families failed.

When communities became involved in regulating misbehavior, wrongdoers found themselves combatting not just a single opponent but presenting their case or defending their behavior before their entire neighborhood. The community tended to deliberate over behavior (through discussion that might be called gossip), listen to evidence, and come to a decision about its acceptability. Individuals could then change their behavior in response to the shaming they received. Thus the community network acted in many ways as the lowest level of court in Massachusetts Bay. It was when the misbehavior was too severe, the community could not agree, or the miscreant "appealed" the community's decision that it came before a magistrate or the county court. When the community was operating most smoothly, the cases never had to move beyond it; it was able to recognize wrongdoing, correct the wrongdoer, and bring him or her back into the community without having to refer to formal authority.³

³John Braithwaite calls this process "reintegrative shaming" and believes it to be the most effective means of social control. It is most likely to occur in highly communitarian and interdependent communities, like those of the English in

The community network had roles of greater and lesser importance for all inhabitants, which were determined by status, age, sex, and race. Established men with formal roles of authority like selectman, juror, member of the watch, or constable held a great deal of informal authority as well. In the community network they acted as advisors and witnesses and were the ones who would work to bring a case to court when necessary. Their informal authority also grew out of their roles as husbands, fathers, and masters acting to guide, punish, or protect their dependents. Established married women and widows were advisors, witnesses, mothers, and mistresses as well. They were particularly important in the regulation of sexual behavior in their roles as skillful women (medical practitioners and midwives) and simply as mothers and mistresses. They admonished their neighbors and household members and watched to be sure that the community's standards were met. Young men could be witnesses but also held more formal roles as members of the watch. Servants of all races, slaves, young women, and children had the smallest roles, but even they informally "warded" (watching during the day) and could report any behavior that was out of bounds.

"Holy watchfulness" and watching and warding are commonplaces in considerations of New England's social history.⁴ But the concepts have not been fully developed.

New England. *Crime, Shame and Reintegration* (New York: Cambridge University Press, 1989).

⁴George Lee Haskins, *Law and Authority in Early Massachusetts*:

Edgar J. McManus and David H. Flaherty bring to their discussions of neighborhood watchfulness a modern sensibility that despises the "tattletale." They see "informers" as disreputable impingers on privacy.⁵ Instead we need to see that watchful inhabitants were working to create and uphold lawful and moral communities. By watching their neighbors and either admonishing them themselves or bringing cases before authorities, Middlesex people, both men and women, were demonstrating the investment they felt in their communities. They were not the puppets of authority; they were part of the authority, and each person contributed to the determination of right and wrong. Laurel Thatcher Ulrich's discussion of the way community matrons exercised control in Ipswich, Massachusetts makes this investment clear.⁶ Lois Green Carr, Russell R. Menard, and Lorena S. Walsh have a particularly good discussion of "informal

A Study in Tradition and Design (New York: MacMillan, 1960), 91. He mentions especially that between church members, but also notes that it occurred in England outside of church structure.

⁵"Informing for profit was the mercenary first cousin of holy watching and an important factor in law enforcement in every colony. It even had the gloss of piety and the sanction of religion, which taught that God would judge New England harshly if it permitted sin to go unpunished." McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692* (Amherst: University of Massachusetts Press, 1993), 69; Flaherty, *Privacy in Colonial New England* (Charlottesville: University Press of Virginia, 1972), 205.

⁶*Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750*, (New York: Oxford University Press, 1982), 51-67.

neighborhood networks" in *Robert Cole's World: Agriculture and Society in Early Maryland*.⁷ Roger Thompson's analysis of community control includes three levels of informal authority: families, neighbors, and "chief men." However, he emphasizes the vindictiveness of some witnesses while shortchanging the important role watchful neighbors played in stabilizing the community.⁸ Eli Faber discusses "universal surveillance" at an institutional level, mentioning towns, churches, constables, tithingmen, and the shame inherent in public punishment.⁹

In her discussion of gendered power in the community, Mary Beth Norton argues that the horizontal relationships of community life were anomalous to the hierarchical structure of colonial society. She asserts that these relationships undermined hierarchical control.¹⁰ In contrast, I argue that

⁷(Chapel Hill: University of North Carolina Press, 1991), 140-42. See also Lorena S. Walsh, "Community Networks in the Early Chesapeake," in Lois Green Carr, Philip D. Morgan, and Jean B. Russo, eds., *Colonial Chesapeake Society* (Chapel Hill: University of North Carolina Press, 1988), 200-241.

⁸*Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699* (Amherst: University of Massachusetts Press, 1986), chap. 11. See also Roger Thompson, "'Holy Watchfulness' and Communal Conformism: The Functions of Defamation in Early New England Communities," *New England Quarterly* 55 (1983): 504-22.

⁹Eli Faber, "The Evil That Men Do: Crime and Transgression in Colonial Massachusetts," (Ph.D. dissertation, Columbia University, 1974), chap. 7.

¹⁰Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), 183-277.

connections among people in communities were critical to the stability of hierarchical control. People of relatively equal status deferred to those above themselves in the hierarchy and expected deference from those below, and worked with each other to preserve this order. These differing statuses fit naturally into community structures; the vertical hierarchical connections supported and were supported by the joint efforts of neighbors of similar status, connected horizontally.

New Englanders practiced the community watchfulness common in England with a particular Puritan intensity.¹¹ They believed that sinful behavior on the part of one person sullied the whole community; each sin was a failing of all. A community that allowed sinful behavior risked not only damnation for each person's soul, but the immediate wrath of God. The individual involvement of community members in policing sin reflected this fundamental investment in the behavior of other people. Middlesex Puritans expected themselves to set good examples (part of a sin was having "given evil exempeles unto otheres whereby they may by the same be provocked to sinn") and to maintain the virtue of the entire community by watching over others to prevent sin.¹²

¹¹See Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Oxford University Press, 1988), 173-75, 177-78 and "'Being Stirred to Much Unquietness:' Violence and Domestic Violence in Early Modern England," *Journal of Women's History* 6 (1994): 73, 78-82, 84.

¹²Trial Shepherd Pore was confessing to premarital fornication, Middlesex County Court folio files,

Vigilance by all was necessary to prevent a situation that would "shame the country."¹³ This collective guilt made sin truly frightening because, as one young woman confessed, she had "doun what I can to poull doune Jugmente from the lord on my selve but allso upon the place where I live."¹⁴

Watching and warding were essential to the enforcement of social norms in Middlesex communities. Neighborhood watchfulness included both informal and formal variants. All

Massachusetts State Archives, Boston, file 28 (hereafter cited as file 28). David Hackett Fischer's assumption that Pore came from "the underclass" is incorrect, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989). Her father, Deacon Ralph Shepherd, paid her fine, though her husband was whipped. David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 4 vols., Massachusetts State Archives, Boston, 1:230 (hereafter cited as Pulsifer). The best-known evocation of the Puritan belief in collective responsibility for behavior is Winthrop's "City upon a Hill," "A Modell of Christian Charity," *Winthrop Papers*, vol. 2 (Boston: Massachusetts Historical Society, 1931), 282-95. See also Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (Boston: 1944; revised ed., New York: Harper and Row, 1966), 9-11 and Gail Sussman Marcus, "'Due Execution of the Generall Rules of Righteousnesse': Criminal Procedure in New Haven Town and Colony, 1638-1658," in David D. Hall, John M. Murrin, and Thad W. Tate, *Saints and Revolutionaries: Essays in Early American History* (New York: W.W. Norton & Co., 1984), 99-100. Flaherty also notes the Puritan belief in the joint responsibility for sin though he argues against the idea's pervasiveness, *Privacy*, 151-52, 161, 166-67. For the jeremiad as example of this joint responsibility see Sacvan Bercovitch, *The American Jeremiad*, (Madison, University of Wisconsin Press, 1978), 3-17.

¹³Phoebe Page case, Pulsifer 1:6-8.

¹⁴Confession of Trial Pore, file 28. The same sentiment was present in the statement of the Mendon selectmen in 1669, regarding a possible fornication case: "we humble conceive would be a dishonor to god and A blemish to the Town and us if it be consealed from Authority," file 53.

inhabitants kept an eye on their neighbors and anyone who moved through their neighborhoods. The watch was the more formal aspect: a nighttime watch was conducted by one or two men and organized by the constable. While their most important job was to protect the town from overt danger like fire or attack, they also challenged inhabitants they met on the road to learn their business.¹⁵ Warding was watching that occurred in daytime. While it could be formal as it was in Easthampton, Long Island, with men chosen each day for the job, in Middlesex adults of both sexes shared it informally, noticing the behavior of neighbors as they went about their daily tasks.¹⁶ Only nighttime watches had specific men assigned to the duty.¹⁷

Watching and warding and community control were imbedded in the networks that composed communities. For the most part, order was maintained through the exercise of authority by familiar people on each other. Masters and mistresses controlled servants, neighbors, and children. Community networks that worked well were like good women: they rarely appeared in the records. Because there was no reason for successful networks to appear in the county court, we must learn about the successful ones from the ones that failed.

¹⁵See Phoebe Page case below.

¹⁶John Demos, *Entertaining Satan: Witchcraft and the Culture of Early New England*, (New York: Oxford University Press, 1982), 227.

¹⁷See McManus, *Law and Liberty*, 65-70.

The following cases demonstrate different aspects of the workings of authority in community networks. We find people claiming protection and support from other members of their networks. The same group of neighbors could be involved in something as mundane as keeping hogs out of cornfields and something as threatening as a witchcraft accusation. Slander cases often reveal inhabitants attempting to appeal decisions made in the community "court" or to prove that slanderers were a vocal minority who opposed community consensus.

Settler mobility often made community networks temporary, but those who left neighbors and networks behind could expect to take similar places in the new neighborhoods in which they found themselves. On occasion, communities or neighborhoods could divide over an issue, requiring the intervention of the county court to resolve a dispute among neighbors.

Most people fitted comfortably into their community networks, looking for protection and aid from their neighbors and expecting their own points of view to be heeded in their neighbors' disputes. In 1659, Cambridge farmer Richard Cutter learned from his young son that there were hogs in his corn. After calling a woman and a servant from a neighboring household to come with him as witnesses (perhaps he had had troubles with these hogs before), he tried to drive the hogs to the town pound. Instead, they ran onto a neighbor's lot where Cutter's dog attacked them. According to Cutter's complaint, while he was trying to stop his dog from hurting the hogs, the Gleison brothers, whose family owned the hogs,

set on him and knocked him senseless. The altercation continued with Thomas Gleison denying that the pigs had been in the corn and Cutter reminding him that he had two witnesses. Cutter's wife Elizabeth, summoned by neighbor Goody Dixon, came between her husband and Thomas Gleison, who then hit and kicked her. When the servant Cutter had asked to act as a witness rebuked the young man for hitting a woman, Thomas attacked him as well. Another witness to the confrontation was the Gleisons' mother.¹⁸

The behavior of the participants and their description of the fracas to the magistrates reveals some of the ways they expected networks to operate. Richard Cutter's request to two unrelated people to act as his witnesses showed his consciousness of the importance of his neighbors' watching and judging eyes and their usefulness in bringing outside authority to bear. In trouble, he pulled his neighborhood network around himself for protection. While the witnesses failed to shame the Gleisons into better behavior, they were able to testify against them in the court case. The Cutters also condemned Goody Gleison because she did not try to stop her grown sons. They expected this older woman to use her authority to resolve the situation. They complained that instead she stood by and watched her sons' violence without reproving them, called Richard Cutter a liar when he told her that one of the brothers had a knife, and told the witnessing

¹⁸Pulsifer, 1:190, 195; files 21, 23.

servant that he should go about his business.

Neighbor and witness Goody Dixon's actions conformed more closely to the Cutters' expectations for an older woman. She threw herself into the situation. First she went to Elizabeth Cutter's house and called her to come help her husband, asking "will you . . . suffer your husband to be killed?"¹⁹ Dixon accompanied Elizabeth to the scene and witnessed Thomas Gleison's subsequent attack on her.

Dixon's attitude in the testimony reflects her perception of herself as a responsible community member, comfortable that she was justified in summoning and encouraging Elizabeth Cutter to action. She also assumed the role of an unbiased witness, for in addition to her testimony about the Gleisons' behavior, she added that Richard Cutter had used some provoking speeches against the Gleisons.²⁰ The court's decision in favor of the Cutters supported the expectations that they and Dixon had about the way the different combatants should have acted. It also demonstrates how the court stood ready to reinforce communities with the power of the colonial government.

The familiarity of neighbors with each other's lives gave their testimony a special authority. In two different instances people in a Woburn neighborhood tried to influence

¹⁹Testimony of Elizabeth Cutter, file 21.

²⁰Testimony of Goody Dixon, file 21. Dixon was 44 and Elizabeth Cutter was 39.

the county court, sending it statements in support of their neighbors. One undated statement from the early 1660s was signed by a selectman in his official capacity, four couples, a woman, and two men. They "thought meet to comend" to the court's "considderation the great borden that lyeth upon a poore man in our Towne by Reson of a distracted womon." The man's name was not given. The town of Watertown had required him to take the woman in (perhaps she was a relative) and she upset his wife so much that his wife fell into fits. "And more over shee [the distracted woman] is a great distorbans to all his nighbors, And shee is like to mak the poore man Chargabl1 to the Towne if shee Continus wth him." No record exists of the outcome of this situation but the authority taken by these people as neighbors is clear.²¹

A decade later six of these eleven people and three others (including the new wife of one of the six) wrote to the county court in support of a young woman whose "master ackuseth me for nit [w]alking." They stated that they had "lived neiare har home [and had] not known no such acking by har." She had "car[i]ed it well and cefili [safely?] for ani thing that we have discirned by har."²² This neighborhood is

²¹This case included William and Marjorie Clark, William and Judith Simonds, George and Elizabeth Read, Michael and Mary Knight, George Brush, Robert Peirce, and Sarah Bullard, many of whom appear in the Read case below in chapter 4, file 33.

²²File 58. This statement may have been in regard to Mary Ball whose master Michael Bacon Jr. had gotten her pregnant in 1671, sent her to Rhode Island, and escaped jail, file 55. The signers were the Clarks, the Knights, George Read and his second wife Hannah, Robert Peirce, Samuel Walker's wife, and

unusual in that it left records of its collective action. It is typical in the way neighbors came together and judged other neighbors and worked to help them. It is also typical of neighbors' comfortable assumption of authority, even with the county court.

The influence of community networks in situations ranging from the mundane to the life threatening appears in another set of events. Alice and Samuel Stratton of Watertown were involved in three widely different incidents in the late 1640s. According to the surviving records, the only one that was tried before the county court was the charge that they had spoken evil of magistrates, ministers, and church members. But Alice Stratton was also suspected of the capital crime of witchcraft, while her husband was involved in a seemingly trivial civil disagreement between neighbors about animal damage to crops (see table 2.1). The community network in which the Strattons were embedded appeared in all three situations.

Sometime in the late 1640s Alice Stratton and Margaret Jones sat together in Stratton's house in Watertown. Stratton had her bible open on her knees and both women were crying when Mary Dunkin came by. Whether these women were sisters or simply friends we do not know, but there was ample reason for their tears. Jones was accused of being a witch and in 1648 she was hanged for the crime, protesting her
John Knight's wife.

Table 2.1

Incidents Involving Alice and Samuel Stratton

Summer 1648 or before:	Samuel Stratton and Christopher Grant dispute regarding cattle damage resolved by arbitration. Dunkins involved, reportedly as instigators.
June 15, 1648:	Margaret Jones executed for witchcraft.
Sometime between June 1648 and April 1649:	Statements by Strattons that Jones was not a witch and had been unjustly executed.
April 19, 1649:	Mary Dunkin, Samuel Dunkin, and Hugh Clark testify about the Strattons' statements regarding Jones, including Alice Stratton's "shee was no more a witch than she [Stratton] was."
April 22, 1649:	Skillful women's statement of her innocence of slanderous charge of witchcraft. Undated testimony regarding Stratton/Grant conflict as well?
April 24, 1649:	Grand jury presentment of Strattons for slander of magistrates, ministers and church members.
October 30, 1649:	Strattons convicted of slander.
April 2, 1650:	Samuel Stratton refused to make acknowledgement of wrong in slander; required to pay additional £5.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 1:4-5, 11; Middlesex County Court Folio Files 2, 3.

innocence to the very end.²³ Her friend Stratton did not suffer what she viewed as an injustice quietly and soon her life was at risk as well. Her vocal defense of a condemned witch resulted in her being suspected of witchcraft too. In April of 1649 Mary Dunkin testified that Stratton had claimed that Jones was not a witch, even when faced with clear-cut evidence of a witch's tit. Stratton had argued with Dunkin that the mark was the result of childbirth and that midwife Mrs. Brown had seen the injury caused when she attended Jones during the birth of one of her children. While a formal charge of witchcraft against Stratton did not appear in the county court, we know she was suspected because the testimony of four women (one of them the midwife Mrs. Brown) in her defense survives. They stated that "we whose names are underwritten doe judge this woman goodwife Straten to be clere of that slander that is laied upon her for she have tendered hur bodie to use to search of hure ounge volintarie will."²⁴

The midwife's husband Richard Brown and another of the women's husbands posted bond for the Strattons in their slander trial. The Strattons were presented that April for their evil speeches and at the next county court, in October,

²³See Samuel G. Drake, *Annals of Witchcraft* (New York, 1869), 58-61; *Winthrop's Journal, "History of New England," 1630-1649*, ed. James Kendall Hosmer (New York: Charles Scribner's Sons, 1908), 2:344-5; and Carol F. Karlson, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: W. W. Norton, 1987), 20-21.

²⁴The other three women were Anna George, Jane Guy, and Ellen Pendleton, file 2.

they appeared to defend themselves against the charge. Alice and Samuel had both claimed that the magistrates, the ministers, and the church members were culpable in Jones's death. While she promised that they would be punished in the afterlife, he argued that the magistrates were corrupt and would "do anything for bribes and [church] members." Among the witnesses were Mary Dunkin (who had made witchcraft allegations against Alice Stratton) and her husband. The Strattons were fined and required to make acknowledgement in front of the Watertown church. Perhaps Samuel was to make it for both of them; no mention was made of Alice when his refusal resulted in a further fine the following April.²⁵

The four women who testified in Alice Stratton's favor called the witchcraft charges slander. Mary Dunkin was not tried for slander for accusing Stratton of witchcraft, as they seemed to suggest she should be. However, testimony collected by Richard Brown, the midwife's husband, indicates that Dunkin was condemned on an informal level in her community. The undated and damaged testimony of Christopher Grant and his wife Sarah does not correlate with any known court case. It depicts the Dunkins as being out to get the Strattons in a neighborhood dispute. It seems likely that Brown and another respected Watertown citizen collected the testimony to use as part of the evidence clearing Goodwife Stratton of the witchcraft charge that Mary Dunkin made. The

²⁵Pulsifer, 1:4-5, 11.

urgency of the matter was indicated by Sarah Grant's testimony being taken while she was "upon ye sick bed."²⁶ The document records a conflict between Samuel Stratton and Christopher Grant over the damage done to Grant's fields by Stratton's cattle. As good neighbors, Stratton and Grant had taken the conflict to arbitrators when they could not resolve their differences themselves. But the Grants' testimony implies that the Dunkins instigated the neighborhood dispute and did their best to fan the flames back to life when the arbitrators settled it. See table 2.2 for people involved in the various affairs with the Strattons.

The Grants' testimony allows us to see their expectations about the appropriate behavior of neighbors. The Dunkins had reported two incidents of trespass by Samuel Stratton to the Grants. Both the Grants testified that Mary Dunkin had told them that Stratton had come into another man's field and gathered up his peas and their stalks and started to carry them away.²⁷ Dunkin told the Grants that she had called out to Stratton demanding why he took the peas away. In response Stratton laid down the bundles of pea stalks and replied that there were no peas in them. She reported that the next day he brought his hogs to eat the pea stalks in the field. Grant further testified, regarding a second incident of trespass, that both Dunkin and her husband

²⁶File 3. Thomas Hammond accompanied Brown.

²⁷Name illegible, possibly Bartlett.

Table 2.2

People Involved in Stratton Cases

Mrs. Elizabeth Brown	Midwife, examined Alice Stratton and testified to her innocence.
Mr. Richard Brown	Posted bond for Strattons in slander case; collected testimony regarding Stratton/Grant dispute.
Hugh Clark	Testified against Strattons' in slander case.
Mary Dunkin	Instigator with husband of Grant/Stratton dispute; witness to Alice Stratton's slander and possible witchcraft.
Samuel Dunkin	Instigator with wife of Grant/Stratton dispute; witness to Samuel Stratton's slander.
Anna George	Examined Alice Stratton and testified to her innocence.
Christopher Grant	Strattons' neighbor. Testified regarding Dunkins' behavior.
Sarah Grant	Strattons' neighbor. Testified regarding Dunkins' behavior.
Jane Guy	Examined Alice Stratton and testified to her innocence.
Thomas Hammond	Collected testimony regarding Stratton/Grant dispute.
Margaret Jones	Executed for witchcraft.
Mr. Brian Pendleton	Posted bond for Strattons in slander case.
[Mrs.] Ellen Pendleton	Examined Alice Stratton and testified to her innocence.
Alice Stratton	Jones's friend; accused of witchcraft; convicted of slander.
Samuel Stratton	Disputed with Christopher Grant; convicted of slander.

had told him that Stratton's cattle, with their owner's encouragement, had spoiled two loads of Grant's hay, and his rye and peas in the field.²⁸

The Grants' testimony showed how the Dunkins had represented themselves as good neighbors. According to her story Goodwife Dunkin had challenged Stratton in one incident of trespass and had reported the second to its victim. But the Grants came to doubt the Dunkins' neighborliness. They told a different story, one in which the Dunkins were the aggressors. Grant and Stratton had taken their differences to arbitrators, looking for peace. Using, in part, Samuel Dunkin's statement about how much hay Stratton's animals had destroyed, the arbitrators awarded Grant peas, Indian corn, hay, and six shillings. But Grant explained that Stratton had proved to him "by good prof" that Dunkin's hogs had also done a great deal of damage, so he returned the six shillings to Stratton. Here the role that the Dunkins had chosen for themselves began to unravel. Rather than careful neighbors, they seemed to be troublemakers themselves. Instead of accepting responsibility for the damage that their animals did, they blamed it on another neighbor. And the Dunkins' wrongdoing did not end in simply scapegoating their neighbors. According to Grant's testimony, the Dunkins tried to aggravate the problem by encouraging him to take the

²⁸Grant said that the Dunkins told him that Stratton "woould keepe them upone his pease & Rie himself," file 3.

Strattons to court: "furthermore grant sayth that dunkin & his wif were vere eger to have him [document torn] go to court." The Grants told a story of neighbors with reasonable differences doing their best to work them out but running into difficulties because a third set of neighbors, both husband and wife, were intent on creating discord. Grant ended his testimony by explaining that he had decided not to call on the Dunkins to testify at all to the arbitrators because he felt that they only spoke out of a desire to make mischief.²⁹

The Grants' testimony creates a picture of the day-to-day functioning of a neighborhood network. It reveals the self-representation of the Dunkins and the Grants to the different audiences they addressed. Their self-representations allow us to define some of the roles that these people considered their right or obligation to take. We find women as well as men participating in the regulation of behavior among neighbors. The Dunkins represented themselves to their neighbors the Grants, trying to show that they had been concerned with protecting the Grants' interests. The Dunkins noted Stratton's cattle in Grant's hay. Mary Dunkin told the Grants how she had challenged Stratton when she saw him taking someone else's peas. According to her, she had stopped Stratton (for a day at

²⁹It is not clear whether Grant was referring to a second arbitration or a second opportunity for Dunkin to testify in the original arbitration, file 3.

least) from taking peas that did not belong to him. In giving their testimony, the Grants represented themselves to the neighbors who acted in an official capacity taking testimony. They also were representing themselves to their neighbor and sometime adversary Samuel Stratton. The Grants told a story of neighborly interference going too far and disguising animosity. From her sickbed, Sarah Grant reported the words of Mary Dunkin, and Grant clearly saw her role as a witness as important and normal.

While women had important roles to play in protecting neighbors' property, neighbors measured them against ideals different from those for men. A relatively quiet public demeanor should accompany subservience to their husbands.³⁰ Depicting the Dunkins as abusing their roles as neighbors may have been easier because of Mary Dunkin's assertiveness. Instead of staying out of the situation (like Alice Stratton), or supporting the testimony of her husband (like Sarah Grant), Dunkin seemed to put herself forward too much. Her husband also stepped beyond his appropriate role by interfering between neighbors and blaming a neighbor for his own fault. By depicting both the Dunkins as acting inappropriately, the Grants were able to make Mary Dunkin appear to be a flawed witness and thus help Alice Stratton escape the witchcraft accusation.

³⁰Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1982), 59.

A neighborhood network had pulled together around Alice Stratton to protect her from the witchcraft allegation. The network included people of similar status to the Strattons, like the Grants and two of the women who examined Alice. It also included higher status people like the Browns and the Pendletons.³¹ The Dunkins, on the other hand, seem to have been marginal in Watertown. They rented their land and did not stay long enough in the town to leave any kind of record of their residence except these cases in the county court. As renters of a house and land they had a place in the community network. But their seemingly low economic status may have made them more susceptible to being viewed as troublemakers and having their testimony doubted.³² The composition of this community network suggests the ways hierarchical and vertical relations interacted within communities. Families like the Browns and the Pendletons that included town leaders also provided leadership within

³¹For information on Brown see Henry Bond, *Genealogies of the Families and Descendants of the Early Settlers of Watertown, Massachusetts* (Boston, 1855), 123-4. He had been removed as elder of the church in 1632 after saying Catholic churches were true churches. But he was a commissioner to end small causes starting in 1650, Pulsifer, 1:10. For the Pendletons, see Watertown Historical Society, ed., *Watertown Records Comprising the First and Second Books of Town Proceedings with the Grants and Possessions also the Proprietors Book and the First Book and Supplement of Births, Deaths, and Marriages* (Watertown, MA, 1894) 1, 2, 12, 16. They left Watertown in 1649, James Savage, *A Genealogical Dictionary of the First Settlers of New England*, 4 vols. (1860-62; reprint, Baltimore: Genealogical Publishing Company, 1965), 3:388.

³²He is not mentioned in *Watertown Records*.

communities, helped along by the deference they received from other community members. In the end it was fortunate for Alice Stratton that the words of the more prominent women who testified that she was innocent of witchcraft and the Grants' evidence of questionable neighborhood behavior outweighed Mary Dunkin's testimony.

As we see in the Stratton case, communities tried cases in the informal arena of neighborhood gossip and watchfulness. There was a distinct difference between this arena and that of the court. But like the county court, where most criminal defendants were found guilty, people convicted before the court of community opinion had little chance to overturn the verdict. In cases where the "defendant" was not willing to accept the decision of neighbors he or she might use the county court as a court of appeal. Communities often convicted and punished with shaming words, and cases "appealed" to the county court tended to be slander cases.

In two of the cases that follow, Phoebe Page of Watertown and Elizabeth Hall of Lancaster rejected the stories that others were telling about them, and brought slander charges in the county court to try to vindicate themselves. Each woman failed in her effort, though Elizabeth Hall's case was more equivocal than Page's, who was brought up on charges before the same court for the behavior that was revealed in her slander case. In a third case, a

young man who challenged the court's authority in punishing his sister was first reported to the court and then supported at the court by men from his community. In a fourth "appeal" case, Peter Tufts brought his servant before the county court for abusing Tufts and his wife. In the testimony we see that Tufts had been convicted in the arena of neighborhood opinion of abusing his servant. He got little satisfaction from the county court. These cases show that there were severe risks associated with rejecting community decisions and attempting to out-flank neighbors. At the same time, appeals to the county court could act as a controlling influence on people who exercised power within communities. Anyone who stepped beyond the limits imposed by the community on gossip, or who criticized a person in good standing in the community, risked having no support from neighbors when they were brought to court by the victim of their "slander."

Phoebe Page's attempt to flout her community's opinion by bringing a slander suit illustrates both the dense interconnectedness of community networks and the way in which the intimate connections of everyday life worked to control behavior. Her case also allows us to see the varying roles that people of different ages and sexes took in enforcing community norms.

In April of 1650 Phoebe Page of Watertown came to court to accuse John Fleming and his wife of slandering her by saying she was with child. Later at the same court she was

prosecuted for "wanton, suspicious behavior."³³ An earlier visit to the county court by Goodman Fleming had resulted in an order that Phoebe be examined by "some skillful women" to determine if she had given birth even "though she be reputed to be a maid."³⁴ Instead of denying the slander, Fleming acknowledged that he and his wife had said Phoebe was pregnant and presented the reasons they had thought so. He also argued that the search had resulted from the speech of others and that his wife had simply spoken from common knowledge. In their defense, the Flemings brought a myriad of witnesses to court who testified that there had been every reason to suspect that Phoebe was not a maid. Five women and fourteen men gave various testimony that validated the community suspicions. Some testified that Goody Page, Phoebe's mother, had told them she was sure her daughter was pregnant. Several men described seeing Phoebe out late at night, either with her father's servant John Poole, or alone. Testimony that Phoebe and John were alone among the Indian corn seems to have been particularly damning. She had sold a kiss to Old Knap for five shillings. Anthony White and his wife, in whose house she had probably lived as a servant, testified that she told them she had to marry "within a month or run the country, or losse her witts."³⁵

³³Pulsifer, 1:10.

³⁴File 7.

³⁵Pulsifer, 1:6-8, file 7.

Different groups of people contributed different types of evidence. Young men tended to have seen her out late at night, while they were on watch duty. Middle-aged men on watch duty saw her at night and were also the confidants of her father or mother. Middle-aged women heard Goody Fleming make her accusation, heard Phoebe's mother worry, and one Goody Hawkins testified that, though Goody Fleming had told her that Phoebe was pregnant, she herself knew that it was not so.³⁶ The one group that is not represented here are young women: they would not receive the confidences of people of their parents' generation and they did not form part of the watch at night.³⁷ This damaging evidence apparently justified Goodwife Fleming's claim, witnessed by two women and three men, that Phoebe was pregnant. No witnesses gave evidence to refute Phoebe's wildness.

No charge of fornication or infanticide resulted from the court-ordered search by skilled women, so we can assume they determined Phoebe had not had a child. Nevertheless she was summoned to appear before the county court in April 1650 for "wanton suspicious behavior." She had brought the slander suit in the same court either in an effort to make a preemptive strike against her accusers, or because she

³⁶It seems likely that either or both Goody Fleming and Goody Hawkins were midwives or "skillful" women.

³⁷Typically young women testified regarding household occurrences, so it seems likely that Phoebe was the only young woman living in the White and Page households.

thought she had evaded the charges and wanted to punish them. But Phoebe had already been convicted in her community and she was unable to overturn that conviction in the county court. The weight of the testimony showed that Goody Fleming's accusation was supported by community consensus. In the process of vindicating the Flemings, the court upheld the community both by deciding Phoebe had not been slandered and by subsequently prosecuting her for her sexual misbehavior.³⁸

The very imbeddedness of Phoebe and her parents within their community worked against her. Both her parents had expressed their worries about their daughter to their neighbors: her mother was afraid that Phoebe was pregnant and wished she had never met John Poole, while her father told a neighboring couple that between his wife and his daughter he "was affraid they would kill him." He told another woman that "if shee knew as much as he Phebe deserved to be hanged."³⁹ Phoebe's parents had failed in applying household

³⁸She was bound for good behavior to the next court. Her father gave the bond.

³⁹Testimony of Goodman Peirce and wife and testimony of Goody Mixture, Pulsifer, 1:8. John Page "constantly affirmed" his fear that his wife and daughter would kill him. One way they could have killed him was by accusing him of incest. A possible reading of Phoebe's sexual misbehavior and desperate efforts to stay away from home, especially at night, is that her father was abusing her. This would have made her potentially subject to the death penalty for incest, possibly explaining her father's comment. For more information see Judith Lewis Herman, *Father-Daughter Incest* (Cambridge: Harvard University Press, 1981) and David Finkelhor, *Child Sexual Abuse: New Theory & Research* (New York: The Free Press, 1984). A more straight forward explanation would be

government to their daughter and their interactions with other members of their community grew out of that failure. Goody Page found no help or encouragement from her husband, so instead seemed to be seeking it from the neighbors in whom she confided her fears. Goodman Page excused his failure of government by claiming his wife and daughter were outrageous criminals, beyond the control of any reasonable person. The Pages' failure meant that both the community and the court had to step in to repair the damage, both to Phoebe and to the community itself.

Ideally, inhabitants with formal or informal authority, like established household heads and their wives or widows, showed a young person who challenged authority the error of his or her ways. The transgressor would then express repentance and rejoin the community. Usually when this happened, the case did not reach the county court. However, we can trace the usual process in the following case where the offense was too severe to be kept on a local level. The community, represented by several respected men, supported the miscreant through his ordeal.

In June of 1658 sixteen-year-old Increase Winn's married sister Elizabeth Polly was convicted, along with a servant, of kissing and traveling alone together at night. Each was sentenced to be whipped ten stripes. That the punishment was that he was referring to the capital crime of disobedience to her parents.

only slightly less than that for fornication, and that Elizabeth Polly was given no choice to pay a fine, implies that the court thought they might be guilty of adultery, though clear evidence was lacking.⁴⁰ Sometime in the next six months, during a conversation with his master and another Woburn man about the court, young Increase Winn exploded in anger. He accused the magistrates of taking the money of a man who was nonsuited for lack of witnesses. Winn added that the magistrates had never done Winn himself any good. Referring to the whipping of the servant tried with his sister (the witnesses do not mention his sister) he said that he would not care if the magistrates were all whipped or if they were at the devil. The two witnesses spoke to two selectmen about the incident and all four of the men went "to convince him of his vilde carraig which he did acknowlege and bewaile with teares." The selectmen and Winn's master were persuaded of his repentence; nevertheless, the selectmen (one of them the town's grand juryman) sent a letter to the grand jury informing it of the incident and of Winn's repentance.⁴¹ In December of 1658 the grand jury presented Winn and in April of the next year, at the age of seventeen, Winn was

⁴⁰For Winn genealogy see Samuel Sewell, *The History of Woburn, Middlesex County, Massachusetts: From the Grant of Its Territory to Charlestown, in 1640, to the Year 1860* (Boston, 1868), 647. See table 5.2 for fornication punishment. No folio testimonies survive for this case. Pulsifer, 1:158.

⁴¹Statement of James Tompson and John Mousall, file 24. Original witnesses were Francis Wyman and John Tidd (master).

convicted at the county court for speaking contemptuously and reproachfully of the court and magistrates. He was fined five pounds and bound over for good behavior. Ten days later half his fine was remitted in consideration of his making an acknowledgement at the next court.⁴²

What is remarkable about Winn's case is that the testimony that convicted him was accompanied by the assurances of one of the witnesses, the two selectmen, and three other respected Woburn residents that Winn "did express . . . with many tears" great regret for his conduct.⁴³ They testified that they had seen nothing but his regret and that he had behaved humbly and in an orderly way since his offense. Winn came to court thoroughly enmeshed in his community and its support may have saved him from a larger fine or a whipping. As we will see in chapter 4, this was a volatile time for Woburn, which may have influenced the court's decision to punish Winn.⁴⁴ It may also explain the community's need to bring the case to court; the threat of disorder from dissension within the town meant that challenges of authority had to be quashed quickly so they would not escalate. Ultimately, the community was able both to see to Winn's punishment and to support him. After his

⁴²Pulsifer, 1:172; files 21, 23, 24.

⁴³Testimony of John Mousall and James Tompson, file 24.

⁴⁴One of the witnesses, Francis Wyman, did not testify on Winn's behalf and may have insisted that the case be presented to the county court.

formal punishment, he returned to his community as a repentant, but accepted, member.

In the following slander case, Elizabeth Hall of Lancaster used the county court to combat hurtful speech. The importance Hall attributed to the reported speech shows the power of words and reputation in colonial communities.⁴⁵ The case also allows us to see, in part, the process by which a community would consider the merits of a situation and determine who was right and who wrong. Finally, the case serves as an important reminder of the temporary aspects of the networks and communities in colonial New England. Frequent moves were a common pattern for New England settlers and these moves meant shifting networks and communities for both those who stayed and those who moved on.⁴⁶

In October of 1651 Elizabeth Hall brought a case of slander against George Whaley. Wife of prominent settler John Hall, Elizabeth was living without her husband, who had returned to England, when she accused Whaley of reporting that she believed that all things, even wives, should be held in common.⁴⁷ Whaley had claimed that he heard the story from

⁴⁵See Jane Kamensky, "Governing the Tongue: Speech and Society in Early New England" (Ph.D. diss., Yale University, 1993).

⁴⁶Virginia DeJohn Anderson, *New England's Generation: The Great Migration and the Formation of Society and Culture in the Seventeenth Century* (New York: Cambridge University Press, 1991), 100-14. Early mobility was usually followed by long-term persistence. This shifting would have made general assumptions about roles more important, as people would expect the same rules to apply in different places.

⁴⁷Henry S. Norse, *The Early Records of Lancaster Massachusetts*

Mr. Phillips, who had just returned from a trip to distant Lancaster, in the buttery at the college in Cambridge.⁴⁸

"Much greived at it that such a scandall should be raised against her knowinge her selfe free & cleard," Hall had been successful in convincing visiting Lancaster proprietors Stephen Day and Samuel Rayner that she had not said any such thing.⁴⁹ With their support and that of two other men she confronted Whaley.⁵⁰ Whaley stuck to most of his story, but left out the most damaging bit, that she had said that wives should be held in common as well. Hall convinced Lancaster neighbors and visitors of her innocence, but the story had originated in Cambridge and might continue to circulate

1643-1725 (Lancaster, 1884), 262. Communist ideas were held by some adherents of radical sects in England, see Christopher Hill, *The World Turned Upside Down: Radical Ideas during the English Revolution* (New York: Viking Press, 1972), 91-94.

⁴⁸Also called Sr. Phillips. This might have been minister George Phillips of Watertown, who was an overseer of Harvard College. He died in 1644. Robert Charles Anderson, *The Great Migration Begins, 1620-1633*, 3 vols. (Boston: New England Historic and Genealogical Society, 1995), 3: 1447 and Savage, *Genealogical Dictionary*, 3:409-10. If so, it was a very old story, but it explains why he did not testify. George also had a son Samuel who was born in 1625 and was a minister in Rowley.

⁴⁹Declaration of Elizabeth Hall, testimony of Stephen Day, testimony of Lawrence Waters and Richard Smith, file 4; Pulsifer, 1:19.

⁵⁰The two other men were Lawrence Waters and Richard Smith. Waters was an immediate neighbor who had sold the Halls their house lot, while the Prescotts and Smith lived on the other side of the river. Day and Rayner never set up permanent households in Lancaster but land they owned was on the other side of the river. Norse, *Lancaster*, 242 (maps), 262.

there. Perhaps simply to protect her reputation, or because being thought to hold heterodox beliefs in Massachusetts Bay might be dangerous, Hall brought the case to the county court. There, respected Lancaster citizens Mary and John Prescott testified in her behalf. They reported that Mr. Phillips had told them that Elizabeth Hall had asked about the view and had said she had seen bad things come of it when someone staying in her home held it.⁵¹ Hall and four men described her refutation of the story in Lancaster. Though the evidence seems convincing that she had only asked Mr. Phillips what he thought of people who held that opinion, and had not maintained it herself, in the end she withdrew the case and paid costs of eleven shillings.

It is not clear why Hall dropped her case. It may be that Whaley was already seriously ill with the illness that killed him the following year, or it could be that, though she proved he uttered the words against her, she really did hold unpopular views that were too radical for New England. Lancaster was tainted by its association with Dr. Robert Child, the remonstrant, who had returned to England after a serious brush with Massachusetts Bay authorities for disputing the requirement that freemen be church members.⁵² Middlesex County magistrates may have wanted to make clear

⁵¹John Prescott attested on oath to the written testimony given by both he and his wife.

⁵²See Samuel Eliot Morison, *Builders of the Bay Colony* (Boston: Houghton Mifflin, 1930), 244-68.

their support for anyone who reported radical beliefs, regardless of the particulars of the case.

The testimony for this case offers a fascinating view of the process the community used to determine whether Elizabeth Hall or George Whaley had been acting appropriately. The story begins at the house of the Prescotts, Lancaster's leading inhabitants.⁵³ Proprietors Stephen Day and Samuel Rayner were probably boarding there, looking after their interests in the town, when they became involved in a conversation with their host about Hall. John Prescott began by denouncing Elizabeth Hall and her husband's views. Stephen Day defended them and George Whaley told Day not to "justify the woman" and related his story about Mr. Phillips at the buttery. The following day Stephen Day and Samuel Rayner went to Hall's house and reported the conversation to her. In her statement to the court, Hall declared that she had been very grieved by the scandal against her and took Day and Rayner along with two other men to confront Whaley. As noted above, Whaley stood by most of his story.⁵⁴ Though Hall had not convinced Whaley, she had convinced her neighbors, even the Prescotts. While in the original conversation John Prescott had denounced Hall and her husband, in court testimony, he and his wife supported Hall. John and Mary

⁵³Prescott was a miller and the most prominent settler to move to and remain at Lancaster. Norse, Lancaster, 278-279.

⁵⁴Declaration of Elizabeth Hall, file 4.

Prescott testified that Phillips had told them that Hall asked what he thought of the opinion that all things are held in common "without any exception." But in response to his answer that it was "a damnable opinion," she agreed and said she had "knowne sad effects to come of it." In further conversation Phillips found she had "kept one in her house which was of that opinion."⁵⁵ The Prescotts had gone from condemning Hall to giving testimony that vindicated her to some degree. The consideration of the issue in the community forum that Hall had forced had convinced them, and they upheld the community's decision in their testimony.

Hall's effort in fighting Whaley's accusation and the testimony of the various witnesses reveal a strong community network operating even in a nascent frontier town like Lancaster. Temporary communities and those just beginning could act as strongly as well-established, slow-changing ones. Lancaster was founded by a group of people who came from Watertown. Thus the settlers had already formed part of two Middlesex communities when John Hall returned to England. But the community still functioned strongly. Neighbors had important roles in regulating behavior. Neighbors condemned the Halls in the original discussion about their views at the Prescotts' house; then various neighbors helped in Elizabeth Hall's efforts to put the story right. Hall both expected and received support in her efforts to reject the

⁵⁵Testimony of John and Mary Prescott, file 4.

story. Her subsequent return to England meant that her place in the Lancaster community had been temporary; permanence was not necessary to the strength of networks.

Whatever the outcome, Hall exhibited a confidence in her rights and her membership in her community when she brought the charges against Whaley. With her husband in England she brought the suit alone but could count on the supportive testimony of her neighbors. Her confidence in the county court may have been misplaced, but she was rightly sure of the support of her neighbors. Though John Hall remained in England, his name appeared once more in the county court the following year, this time as a defendant, accused of pulling down fence on a common pasture. Another townsman acted as his attorney, and three Lancaster men testified in his defense, two of whom had supported his wife. This time the Halls won the case. Soon after, Elizabeth Hall returned to England to join her husband, where they may have found a climate more friendly to their beliefs.⁵⁶

We do not know why the Halls left New England, but that mobility could sometimes be connected to reputations in a community is suggested by the case of Richard French. Convicted of abusive carriage and abuse offered to the body of the maid Jane Evans on October 3, 1654, he sold his land and left Cambridge for good on October 8, five days later.⁵⁷

⁵⁶Pulsifer, 1:29, file 6; Norse, Lancaster, 262.

⁵⁷Pulsifer, 1:62-63; Lucius R. Page, *History of Cambridge, Massachusetts 1640-1877 with a Genealogical Register* (Boston,

As we will see in chapter 3, two middle-aged matrons and one of their husbands (and others) had come strongly to the defense of the maid Jane. It seems probable that the reputation of both French and his wife (testimony had also been given that she had beaten Jane with a hog yoke) had been harmed beyond the point where they could get along with their neighbors. The fairly high mobility of New England settlers might have allowed escape from community disapproval.⁵⁸ It could also have given communities relief from inhabitants who would not conform.

In chapter 4 I argue that the efficacy of community control could be reduced when structures of authority were disrupted by disputes between authority figures. The following case, which involves a challenge to a community decision about the mistreatment of a servant, comes from Malden, one of the towns where authority was challenged. In 1659 Peter and Mary Tufts, having lost an issue in both the court of community opinion and before town authorities (probably the commissioners to end small causes), brought their case to the county court. According to their

1877), 58. French's bonds have not survived. Though he was still bound for £10 when he sold his land, the quick sale after the court date may indicate a larger bond for his appearance in court that was secured with his land.

⁵⁸The timing of the Frenches' move seems too close to be by chance, but Cambridge, like Watertown and Charlestown, was a staging area for the creation of new towns and mobility was the norm. The family that defended Jane, the Hildreths, ended up in Chelmsford.

neighbors' testimony, the couple had treated their servant Henry Swenoway with unjust severity. The neighbors described seeing Swenoway beaten unmercifully "with ye great end of a goad sticke" and another time with two sticks pulled from apple trees with the roots still attached: "with on[e] and then with the other untell he broke them both about him."⁵⁹ They tried unsuccessfully to intercede on Swenoway's behalf. James Barrett reported that "I tooke an occasion to speake to him why he did beat his man with such an unreasonable weapon, & Goodm Tufts answr was, yt he was his servt & yrfor he would beat him with wt he list." William Luddington sent his wife with Swenoway to speak to the Tufts and later met Peter Tufts and "asked him why he did beat his man for going to a magistrat to complaine and the said Peter Tufts answarid that he would beat him againe and againe." The testimony was so convincing that Malden's deputy to the General Court (most likely acting as a commissioner to end small causes) removed Swenoway from the Tufts household and placed him with another master, a townsman who had testified against the Tufts.⁶⁰ He may also have convicted them of abuse and fined them.

The Tufts did not challenge the loss of their servant, rather they accused him before the county court of disobedience to them. In arguing that he had displayed

⁵⁹Testimony of James Barrett, file 25; testimony of John Moulton, file 24.

⁶⁰File 24, Testimonies of James Barrett, Helen Luddington, William Luddington, and John Bunker, file 25.

"untoward carriages toward his sd Mr and Dame," they were attempting to show that their own harshness was justified and that they had not failed in their governance of their household.⁶¹ They won their case, but only to the extent that Swenoway was bound over to the next court for his good behavior (his new master bound himself for him). Each side had to pay its own costs. It was a hollow victory: the Tufts had to pay for having brought the suit and the bond for good behavior was moot as far as they were concerned because they were no longer his master and mistress. Their strong feelings against both the court and community were revealed in two cases that soon followed. Peter Tufts's anger must have overflowed immediately. At the same court, he was convicted of defaming Deputy Governor Richard Bellingham (who was sitting as one of the justices on the court) by saying that "he had not justice done."⁶² Following the court, his wife slandered the members of the community who testified in Swenoway's defense saying "that none spake against her husband at the Court but the scumes of the Contry and liars and them that did not care what they said."⁶³ It may have

⁶¹Pulsifer, 1:176.

⁶²Pulsifer, 1:206. Tufts gave a twenty pound bond to appear at the next court and make an acknowledgement and was required to pay costs.

⁶³Testimony of John Moulton; John Creete's testimony specifically referred to those who took Swenoway's part, file 25, Pulsifer, 1:200. Mary Tufts was ordered to make acknowledgement after Sunday meeting or to pay fifty shillings to each of two plaintiffs.

taken a while for her victims to hear what she had said, but a year later she was convicted of slander at the county court.

The Tufts ended up caught between two sets of authority, neither of which supported them in the way they thought it should. Their effort to appeal the community's decision that they had unjustly treated their servant ended with their discomfiture at the court and with Henry Swenoway still safely in another family's house. The court did its best to uphold community order: it tacitly supported the decision to put Swenoway in a new household, but still convicted Swenoway of not behaving properly to his former master and mistress. In expecting the Tufts to bear their own court costs, the court was showing that they were not without fault. Finally, by decisively punishing the Tufts for the complaints about the court's decision and the community's role in it, the court was buttressing both its own authority and the authority of the community to witness against neighborhood wrongdoing.

Challenges to community authority can also be seen in what we might call neighborhood feuds: a dispute between two people or families that brought the entire neighborhood into the issue. The neighborhood might enter in two different ways: as a unified whole behind one of the combatants or divided itself between the principals to the dispute. The case of Phoebe Page discussed above is an instance where the entire community joined in condemning a member. The

following case shows a neighborhood divided between two versions of a story that brought its teller to court for defamation.

As we have seen in many of these stories, gossip was an important tool that community members used to control behavior. It worked both to admonish and punish perpetrators and to remind hearers about appropriate standards of behavior.⁶⁴ Sally Engle Merry defines gossip as "informal, private communication between an individual and a small, selected audience concerning the conduct of absent persons or events." Once the story reaches a public arena, it becomes scandal. She argues that gossip has two forms: information sharing and judgement making. It also acts to symbolize intimacy. The speaker and his or her audience are closer than the speaker is with the subject of the gossip. Gossip can provide an important connection between formal and informal control by leading to formal punishment. However, those who repeat gossip too widely risk taking it outside the intimate community that fostered it, beyond the circle where the originators are willing to repeat it.⁶⁵ Such an instance occurred when John Lawrence was too busy in repeating a story

⁶⁴See Braithwaite, *Reintegration*, 76-77.

⁶⁵"Rethinking Gossip and Scandal" in Donald Black, ed., *Toward a General Theory of Social Control*, vol. 1 *Fundamentals* (New York: Academic Press, 1984), 275-77, 295. For an excellent discussion of gossip in colonial America, see Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," *William and Mary Quarterly* 44 (1987): 3-39. See also Norton, *Founding Mothers and Fathers*, 213-77.

he had heard.

In 1659 a story circulated in Charlestown that ship carpenter John Smith had stolen wood from the woodpile of mariner and future ship captain William Foster.⁶⁶ The tale went that Foster had heard and seen someone take wood from his pile and followed the person home, catching Smith in the act with a log on his back. If Foster took any action, it remained private between his family and Smith. But Foster's wife Ann did not remain silent. In the hearing of a young woman, Ann Foster told Goodwife Elizabeth Stitson that Smith had stolen the wood. Stitson repeated the story to another woman and her daughter. It soon reached John Lawrence who repeated it to a couple of other men. When Smith finally heard the story, he challenged it. In keeping with community norms, Smith, the supposed thief, and the overly talkative Lawrence resolved their dispute over the gossip through an arbitration. William Foster, owner of the woodpile, told the arbitrators that Smith had not stolen the wood and his wife Ann told them that she had never accused Smith of the theft. Lawrence then admitted he was wrong for telling the story and promised to give Smith satisfaction, probably in the form of money.

The situation would most likely have ended there if it

⁶⁶Pulsifer, 1:202, file 25; Thomas Bellows Wyman, *The Genealogies and Estates of Charlestown, Massachusetts 1629-1818* (1879; reprint, Somersworth, N.H.: New England History Press, 1982), 362, 872.

had not been for Elizabeth Stitson. A respected and long-established member of the community, she may have felt that her own reputation was put in question by the arbitrators' result. She told John Lawrence that "it made me tremble to he[a]r Mrs. Foster deny ye Business about John Smith beffor ye Arbitrators." She reaffirmed that she had heard Foster tell the story and told another neighbor "beleve mee I ame horribelly troubled in my spirit to hear sister Foster deny what shee had said."⁶⁷ Using the title sister in reference to Foster emphasized the relationship between the two women as members of the Charlestown church and may explain Stitson's particular concern over Foster's denial with its reflection on her soul and their shared church.⁶⁸ Stitson's support seems to have given Lawrence new courage and he refused to make the satisfaction he promised under the arbitration agreement. When brought before the Charlestown magistrate's court in November of 1659 he explained that he had further witnesses to prove his charges, though they could not make it to court.⁶⁹ As far as we know, Elizabeth Stitson never testified on behalf of Lawrence, though William Foster testified that he had not caught Smith stealing wood. The case was finally resolved in April 1660 before the county

⁶⁷Testimony of Kattren Beall, testimony of Sarah Fosdick, see also testimony of Mary Fosdick, file 25.

⁶⁸For church membership see Wyman, *Charlestown Genealogies*, 362, 902.

⁶⁹Testimony of Jacob Green, file 25.

court, where Lawrence was ordered to acknowledge his defamation before the Charlestown military training band or to pay Smith eight pounds. He had already arranged a smaller payment to Smith that may have been the satisfaction ordered by the original arbitrators.

The facts that Elizabeth Stitson never testified, and that Ann Foster, while denying having accused Smith of theft, did not contradict Stitson's story before either court, leaves the situation ambiguous. William Foster denied ever saying Smith had stolen the wood: he had not repeated the story. But his wife may have. However, neither wanted the story to become general and William Foster did not choose to take any action. When the story got beyond their control, they could only confirm or deny it. If a misunderstanding with Smith over the missing wood had been resolved privately, they risked discord with him, or perhaps a charge of slander, by bringing it up again. Lawrence's defense against the defamation charge involved the testimony of various people that they had heard Elizabeth Stitson tell the story. But Stitson's failure to testify herself ruined Lawrence's ability to defend himself. At this distance we can only speculate that she chose peace in her neighborhood and church, perhaps at the encouragement or command of her husband, who was both deacon and sergeant, over her fear of God's wrath at Ann Foster's denial of the story. The surviving evidence shows that gossip was an important tool in communities, but was also a dangerous weapon that could turn

on those who wielded it without care.

Gossip still had this double-edged quality at the end of the century, as a case from Watertown reveals. In 1700 a story made the rounds that John Treadway and others had visited the town graveyard, dressed in white, and told the dead to rise up as they had been in hell long enough already.⁷⁰ Twenty-one people were involved in the court case. The testimony reveals that once a slander case was being pursued, the spreaders of the story were quite fearful of being blamed for it. Each was quick to put responsibility onto someone else for telling him or her the story. One witness reported that one of the slander defendants had discussed whom he could blame and how other people in the community feared they would be held responsible.⁷¹ In the end, the three who were least able to attribute it to others, two young men and a grandmother, gave recognizance and paid the costs for the case.

Community networks could be quite effective or could fall before the implacability of enemies. But when they did, they had the county court to enforce community standards. In the case involving a dispute over a goose between Richard Temple and the Goble family that I describe in chapter 1, a community network appears in the testimony. Neighbors

⁷⁰Middlesex County Court of General Sessions of the Peace, Massachusetts State Archives, Boston, 1:109; file 193.

⁷¹Testimony of Elisabeth Cadee, file 193.

testified on both sides of the issue; one had seen blows struck, another had not. Temple tried to move the discussion onto the neutral territory of a neighbor's house. The elders of Charlestown church called Goble and Temple together to address their problems. Only when these community efforts failed did the county court become involved to resolve the issue.⁷²

By their nature, court cases that allow us to see community networks also reveal failures and flaws in those networks. Whether the county court was necessary to punish people who would not accept community decisions or was used as a court of appeals when someone was not satisfied with the outcome in the community arena, the cases reveal both the weaknesses of informal mechanisms and their great strengths. They remind us that it was the unusual case that came to court; much of the day-to-day control of behavior completely escaped the written record. Middlesex inhabitants successfully kept conflict under control by claiming important roles in overseeing the behavior of members of and visitors to their communities. Established middle-aged householders, both men and women, demonstrated their investment in their communities by taking agency in this mundane regulation: they watched, they commented, they advised, they admonished, and when necessary, they testified. The self-confidence and surety of purpose that many of these

⁷²Pulsifer, 1:11; files 4, 7.

men and women revealed in their court testimony reflects their customary roles in leading their neighborhoods and aiding in the smooth flow of daily life. In addition to being central in neighborhood networks with men, women also frequently took leading roles in controlling behavior, as we will see in the following chapter.

CHAPTER III

"THIS DEPONENT WAS RESOLVED TO SEE": WOMEN'S AUTHORITY IN MIDDLESEX COUNTY

In November of 1656, Goody Richardson went out to do some work in the orchard that lay near her house. She left two servants alone, nineteen-year-old John Glasier and her ten-year-old niece Ruth Richardson. While she was gone, John tried to force Ruth to "commit folly" with him. When Ruth's threat to call her aunt did not prevent John from grabbing her arm and trying to pull her into a back room, she cried out. According to John, her aunt "came in and so further proceeding were prevented: his dame then dealt wth him for it."¹ Goody Richardson protected her maid and rebuked her male servant without any need to look to a higher authority than herself. We do not know what Goody Richardson said or did to punish John or whether she threatened him with prosecution; whatever she did, his heart "then hardened," causing him to run away. Perhaps his dame's rebuke would have ended the matter if his flight had not required a search of the neighboring houses, escalating the situation beyond the Richardson household. John Glasier's statement that "his

¹David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 4 vols., Massachusetts State Archives, Boston, 1:119 (hereafter cited as Pulsifer); Middlesex County Court folio files, Massachusetts State Archives, Boston, file 11 (hereafter cited as file 11).

dame then dealt with him for it" appears in his confession as the natural, normal result of his crime. Whatever other consequences he might have expected, his dame's rebuke, and her right to make it, was a matter of course.

In the previous chapters we have seen women taking responsibility for community control by admonishing, teaching, testifying, and judging their neighbors' actions. This chapter develops the specific, important roles that women played in the day-to-day regulation of behavior. It argues that certain women, usually middle-aged or older, middle-status, and white, wielded significant authority in the patriarchal culture of Puritan Middlesex county. Protecting young women and controlling the behavior of young people of both sexes was a normal, natural part of their roles as mothers, mistresses, and neighbors. As part of a hierarchical culture, most middle-aged women in Middlesex County had a stake in their communities. Although they were subjects under patriarchy, as skillful women, like midwives and healers, as mistresses, and as neighbors, they had powerful roles that they shouldered and considered their right. In these roles they held authority over men and women of all the races and ethnic backgrounds present in Middlesex. White women were critical to the enforcement of the gender and racial hierarchy of colonial society. While remaining subject to father (and mother), husband, and magistrate, and, while not silent, quiet, in public, they were watchers in their communities and held greater authority on an informal

level than in the formal court. Both with other women, and on their own, they made measured decisions about their neighbors' behavior and used their authority on this lower level to make things right. They punished some offenders using shame and forced others to go before a magistrate or the county court.²

Laurel Thatcher Ulrich and Mary Beth Norton have shown that as mistresses and neighbors white women were protectors and instructors of children and of girls in particular. In addition, women had responsibility over female sexuality.³ Married or widowed women could act in semi-official capacities as medical practitioners, as expert witnesses, and as members of juries of women. While Cornelia Hughes Dayton

²Elaine Forman Crane reveals community women's roles in bringing a man to trial for murder in "'An Excrabell Murder': Domestic Violence in Seventeenth-Century Portsmouth, Rhode Island," (paper presented at the fourth annual Omohundro Institute of Early American History and Culture, Worcester, Ma., June 1998).

³Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1982), especially 98-99 and *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812*, (New York: Alfred A. Knopf, 1990); Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), especially 225-28 and "Gender, Crime, and Community in Seventeenth-Century Maryland" in James A. Henretta, Michael Kammen, and Stanley N. Katz, eds. *The Transformation of Early American History: Society, Authority, and Ideology* (New York: Alfred A. Knopf, 1991), 123-150; see also Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995), 179; and for control over female sexuality see Ann Giardina Hess, "Community Case Studies of Midwives from England and New England, c. 1650-1720" (Ph.D. diss., Cambridge University, 1994), 164-80.

has traced these roles in colonial Connecticut courts, the relationship between informal community controls and formal court controls has been largely unexplored.⁴ Formal roles had informal analogs in which women used the same skills and authority to control behavior in situations that might never come to court. Also, in contrast to seventeenth-century New Haven, where Dayton has found that women left responses to sexual attacks to fathers and husbands, Middlesex women were often prominent in cases of this type. They provided most of the testimony and impetus in punishing assailants, with men playing peripheral roles, in three Middlesex County sexual assault cases from the 1650s.⁵

What is the significance of the power women wielded? It was not proto-feminist, nor was it used in opposition to the power men wielded. White women supported the patriarchy and the men who embodied it and those men supported the women who acted to uphold community stability. The concept of agency allows us to judge women's behavior using their own standards of importance, while avoiding the distortion of a nineteenth and twentieth-century concept of individualism that would have been foreign in the extreme to Middlesex people.⁶

⁴Dayton, *Women before the Bar*, 21, 246.

⁵Dayton, *Women before the Bar*, 240. See Evens, Stow, and Draper cases below.

⁶See Natalie Zemon Davis, "Boundaries and the Sense of Self" in Thomas C. Heller, Morton Sosna, and David E. Wellbery, eds., *Reconstructing Individualism: Autonomy, Individuality, and the Self in Western Thought* (Stanford, Ca.: Stanford University Press, 1986), 53-63 and Thomas Kuehn,

Using anthropological literature as a point of departure, Thomas Kuehn argues that Renaissance Florentine women's personhood was defined in a drastically different way from twentieth-century Western personhood. He argues for the centrality of "social personhood" in which "relationships and social position, not individual freedom and self-determination" are the significant considerations for each person.⁷ Approached this way, gender does not make sense as defining opposites, but rather as positioning a person in social relationships. Among other cultures, personhood is not innate, but may be confined to certain people, like parents or men.⁸ Persons, in this formulation, are "replicable and relational." Kuehn's critical point here is that "the social person is an agent." This agency is not that of an individual but of a person imbedded in relationships with others, where neighborhoods and families have greater significance than the individual. But this imbeddedness does not completely determine the person's action because each is also an agent who makes decisions

"Understanding Gender Inequality in Renaissance Florence: Personhood and Gifts of Maternal Inheritance by Women, " in *Journal of Women's History* 8 (1996): 58-80.

⁷Kuehn, "Understanding Gender Inequality," 59.

⁸J. S. LaFontaine "Person and Individual: Some Anthropological Reflections" in Michael Carrithers, Steven Collins, and Steven Lukes, eds. *The Category of the Person: Anthropology, Philosophy, History* (Cambridge: Cambridge University Press, 1985), 132-7.

about appropriate behavior.⁹ In Renaissance Florence, as a result, the "legal subordination of women did not preclude them from all forms of agency and did not totally deny them all measure of legal personality."¹⁰ Thus, an over-emphasis on patriarchy, as we conceive it in the twentieth-century, not only prevents us from seeing the ways in which women were able to exercise agency, but also makes it impossible to understand how women saw their own place in the world. Viewed in terms of social personhood, we can see how and why women in colonial New England were complicit with patriarchy and saw abuses, which modern feminists might attribute to the patriarchal system itself, as problems within relationships or in other people, rather than a problem with the society.¹¹

⁹Kuehn, "Understanding Gender Inequality," 60-61; Martin Hollis "of Masks and Men" in Carrithers, Collins, and Lukes, eds. *The Category of the Person*, 232.

¹⁰Kuehn, "Understanding Gender Inequality," 58.

¹¹LaFontaine calls people who use our society's concept of individualism as an analytical tool "methodological individualists," "Person and Individual," 125. See Steven Lukes for the inescapability of individualist thinking in modern cultures, "Conclusion" in Carrithers, Collins, and Lukes, eds. *The Category of the Person*, 298; see also Stephen Greenblatt, "Fiction and Friction" in Heller, Sosna, and Wellbery, eds., *Reconstructing Individualism*, 30-52. Among the Hagen of Papua, New Guinea, Marilyn Strathern finds that even when femaleness is denigrated, women still have a "position of some substance and maneuverability." Both women and men hold similar views regarding gender but a person of either sex can act in a male way or in a female way, "Self-interest and the Social Good: Some Implications of Hagen Gender Imagery," in Sherry B. Ortner and Harriet Whitehead, eds., *Sexual Meanings: The Cultural Construction of Gender and Sexuality*, (Cambridge: Cambridge University Press, 1981), 166-91, quote 177.

Middlesex women acted as agents within their social relationships. They achieved a particularly important role in those relationships after they became established as household mistresses. I begin with cases that show white women's authority in households, neighborhoods, and court and end with two unusual cases, where white women's authority was exercised over Indian men, showing some of the implications of white women's authority in the multi-racial world of colonial New England.

As with most of women's activities in colonial America, few documents survive that describe women's use of authority, particularly on the informal level. The normality of women's authority is suggested by the 1648 Cambridge Platform. Among the church offices advocated is that of "widow," based on 1 Tim. 5:9-10. "Where they may be had," these older women were "to minister in the church, in giving attendance to the sick, & to give succour unto them, & others in the like necessities." John Cotton wrote of this role in 1645: "wee look at them as fit Assistants to the Deacons, in ministering to the sick poore Brethren in sundry needfull services." He added that it was "somewhat rare" to find widows who were at least sixty years old (the age specified by Paul) who were "so hearty, and healthy, and strong, as to be fit to undertake such a service."¹²

¹²Williston Walker, *The Creeds and Platforms of Congregationalism* (New York, 1893), 214; John Cotton, *The Way*

In the Middlesex county court records, an occasional case reveals women assuming authority. It is the unusual case, often when community-based controls were not enough, that allows us to see the roles women played in maintaining social order. These failures of informal mechanisms include crimes too severe for community sanction that required the court's formal punishment and situations in which people refused to accept community strictures. The records also include an occasional incidental example of women's authority. In court the informal authority of women as "skillful women" (midwives and healers), mistresses, and neighbors was acknowledged and substantiated by the patriarchal power represented in that formal male arena.¹³ Occasionally court documents preserve situations in which women's consciousness of their authority outside court led them to use court-like formalities to buttress it. The records also show that women's authority, like men's, was tightly bounded and the county court was one of the mechanisms for keeping women in these bounds.

Specific cases show that skillful women had authority in particularly female domains. They acted as midwives and

of the Churches of Christ in New England (London, 1645), 39; and David D. Hall, *The Faithful Shepherd: A History of the New England Ministry in the Seventeenth Century* (Chapel Hill: University of North Carolina Press, 1972), 95.

¹³The term "skillful women" is from a court order to search a young woman for signs of pregnancy in 1649. Case of Phoebe Page, file 7. See also file 25, testimony against Winifred and Mary Holman.

inspected other women's bodies for signs of pregnancy, childbirth, or witchcraft. In 1668 the midwife's role in identifying the father of a bastard was formalized in law. To ease the burden of towns forced to support illegitimate children, and to bring fathers to account, the General Court ordered that a man consistently charged by the mother, "especially being put upon the real discovery of the truth of it in the time of her Travail," was liable for maintenance of the child, though not other punishment.¹⁴ Before 1668, midwives did not appear regularly in the county court records.¹⁵ However, in one unusual case that occurred in 1650, the midwife's testimony was used to identify the father of a married woman's child. Although the baby was born after her marriage to another man, the mother had accused John Fosdick of "getting her with child when she was single." The case was referred to the quarter court in Boston, perhaps because there was some question of adultery.¹⁶ Midwife Alice Rand's testimony was probably recorded for the same reason. She testified that after helping Ann Branson deliver her

¹⁴*The Colonial Laws of Massachusetts. Reprinted from the Edition of 1660, with the Supplements to 1672. Containing also, The Body of Liberties of 1641* (Boston, 1889), 257.

¹⁵Until that time, a woman's accusation usually led to the man's confession, probably through the pressure brought by local magistrates and community opinion about the situation. See chapter 5.

¹⁶Quarter court was used to designate county court. The Suffolk County court was sometimes used as a path to the Court of Assistants, as it was in this case.

child, her patient was "very weeke." The midwife then "pressing her[,] she said Jno Fosdicke was ye father."¹⁷

Even before the 1668 law, testimony taken during labor was occasionally used as evidence. In 1667 Rachel Smith and Robert Shepherd were accused of fornication. Shepherd would later deny the accusation when he was examined before two magistrates. Perhaps because he had already denied his responsibility, Rachel Smith was examined about the identity of the baby's father during her labor. Hannah Cooper testified that "shee comeing to Rachell Smith found her in great payne travelling in child birth, and asking her by whom shee was with child, shee said it was by old Goodman Shepards man." Joanna Towne added that "in the time of her extremity shee from time to time affirmed that Robert Shepard was the father of her child." Smith described her encounter with Shepherd to the two women and a couple of days after the baby was born described a further meeting with him when she had refused to have anything else to do with him. It appears that these women were acting to support Smith in her accusation, rather than examining her in an adversarial way.¹⁸

Skillful women called on to inspect other women's bodies included midwives and healers, as well as women with less specialized knowledge. Most middle-aged women had some claim to skill after tending to their families' health and

¹⁷Pulsifer, 1:12; file 3.

¹⁸See Ulrich, *A Midwife's Tale*, 149.

attending the births of their friends, neighbors, and relatives.¹⁹ As seen in chapter 2, two major roles of skillful women were searching women for the physical signs of witchcraft and inspecting young women for signs of sexual activity or pregnancy. The four women, one of whom was a midwife, whose testimony exonerated Alice Stratton of witchcraft had examined her body. Part of Phoebe Page's slander complaint against the Flemmings was that their statement that she was pregnant had caused the court to order a search of her by skillful women to discover whether it was true. Skillful women also checked women and girls for evidence of sexual assault.

Women's matter-of-fact assumption of authority as mistresses is shown in scenes captured by chance throughout the court records. A Cambridge goodwife tells her Harvard student boarders to go to bed; the indenture of a girl

¹⁹A variety of names have been given to this role, both in the seventeenth century and by historians. Norton finds the term "able women," defined as "those who had skill in physick & midwifery," and discusses "female juries," *Founding Mothers and Fathers*, 227, 225; Hess reports a "jury of matrons," "Midwives," 170; Dayton notes that "in certain legal situations, white matrons and midwives served the court in a quasi-official capacity" as members of panels that searched the bodies of women, *Women before the Bar*, 21; and Ulrich describes "a kind of 'professional immunity,'" claimed by two older women who had advised a young woman about her behavior, *Good Wives*, 98-99, see also 103. In regard to witchcraft accusations John Demos mentions "special committees of women" who searched other women's bodies, *Entertaining Satan: Witchcraft and the Culture of Early New England* (New York: Oxford University Press, 1982), 180 and Carol F. Karlson refers to "juries of women," *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: W. W. Norton, 1987), 13, 143.

mentions her obligations and obedience to both her her master and dame; a woman initiates a debt case for a boy's boarding, schooling, and care in sickness.²⁰ Married women and widows had a particularly important role in the regulation of sexuality. Mistresses offered chastisement to both male and female servants and to their children for sexual crimes. Fifty-four year old Goody Betts gave a careful description to prove that she had indeed caught Thomas Abbot and Anne Williamson in the act of fornication one morning in her wash house. As she explained to the court at their trial, she broke up the tryst "Rebukeing them."²¹ Mistresses figure more often defending their maids, probably because in this type of situation they often had to call on outside authority to enforce their own. Madame Hopkins had tried to prevent Nicholas Wallis and Jane Lindes's fornication by warning Wallis to stay away from her house. When this failed she brought a complaint to the court "for frequenting her house after warneing to ye contrary, & for abuseing her maide servant as being wth childe by him."²² In the case with which I began this chapter, ten-year-old Ruth Richardson depended on her aunt and mistress to protect her from the unwanted

²⁰Testimony of Elizabeth Stedman, file 16; indenture of Mary Somes, file 10; complaint of Susanna White, file 17; Pulsifer, 1:163. The husband joined his wife as plaintiff in the debt case.

²¹File 7.

²²Pulsifer, 1:83, 90; file 12.

advances of fellow servant John Glasier.²³

Young women could call on the older women in their communities to protect them and punish men who attacked them. Confident in the relationships and social positions that defined their "social personhood," two goodwives judged the evidence against Richard French to be compelling and brought him before the county court to be controlled and punished. In 1654 Elizabeth and Richard Hildreth's servant Jane Evens was sent to do some work in the French household. She sought protection from her mistress and a neighboring woman when Richard French sexually assaulted her and beat her. Her mistress explained to the court how she had pushed Jane into telling them what French had done to her. Jane returned to the Hildreth home very upset and told Elizabeth Hildreth that Richard French had "proved himselfe a dishonest man." "I fear I shalbe the worse for him while I live" she lamented, but would not tell her mistress what had happened. She did however say that it could be seen; Goody Hildreth testified that she was "resolved to see" and found that Jane had been severely lashed on her "breech."²⁴

Martha Russell confirmed Goody Hildreth's testimony. The goodwives' testimony set the stage for "the mayd's" further statement that while she was riding behind French through the woods, he stopped and carried her off the path

²³File 11.

²⁴Pulsifer, 1:62-63.

and threatened that if "shee would take up her coates herselfe" she would have less of a beating, otherwise he would beat her until she bled. He also "did turn her upon her backe & discover her secret parts."²⁵ She told the court and her mistress that she was afraid French would kill her. She and the two older women testified that she had fits as a result of French's attack. Goody Hildreth explained that Jane cried out against French when a fit came upon her.

All the testimony given in court, except French's, confirmed Jane's story. Even French did not deny the beating but only moved it back into his own cellar and included his wife as a party to it. However, his effort to make it appear that he had only reasonably chastised the maid failed. The judgment of Elizabeth Hildreth and Martha Russell triumphed in court. French was fined a total of five pounds, three going to the court and two to Jane. He was also forced to give a bond for his good behavior toward all, but especially toward the maid, and to appear at the next court. In all, three women and three men testified in this case, but unlike most cases in the county court, the women were more central than the men. Jane Evens had appealed to the right venue: the informal judgment of goodwives who had examined her themselves, found her deserving of their protection, and presented their findings to the county court for confirmation and enforcement.

²⁵Pulsifer, 1:63.

Jane Evens's experience contrasts with a rape case that occurred more than twenty years later in Woburn, in 1676, that ended with the punishment of the woman as well as the man. The central role played by older women had not changed. They inspected the young woman's body and offered their judgment about what had happened, but these women seem to have shared with men an increasing reluctance to punish men for sexual assault or rape.²⁶ As I postulate in chapter 5, women's personal interests may have begun to overshadow an unequivocal desire to punish sins and thereby protect their community's well-being.

Elizabeth Pierce accused Benjamin Simonds of rape before the Court of Assistants in 1676. While the jury found him not guilty of the capital crime of rape, it found him guilty of attempting rape and ordered that he go before the county court to "Ansr wt shall be layd to his charg for his fornication or his forcibly abusing Elizabeth Peirce."²⁷ The county court, however, did not convict him of either of these crimes. Simonds requested a jury trial, and the jury instead

²⁶See Dayton regarding reluctance to convict white men of rape in eighteenth-century Connecticut, *Women before the Bar*, 231-84. Norton notes that in the seventeenth century women were often punished with the men they accused of rape or attempted rape, *Founding Mothers and Fathers*, 352-54. It is unclear whether there was an increasing reluctance to convict men in the 1670s in Middlesex, or whether more documents survive that allow us to see what was happening behind the scenes. See chapter 5.

²⁷John Noble and John F. Cronin, eds. *Records of the Court of Assistants of the Colony of Massachusetts Bay*, 3 vols. (Boston: County of Suffolk, 1901-1928), 1:73.

found him "guilty of wanton dallying with Elizab. Peirce tending to uncleanes." The magistrates then sentenced both him and Elizabeth to ten lashes or a fine of forty shillings. In addition, they required him to pay the costs of £4 5s., which effectively made his fine three times hers.²⁸

Pivotal to Simonds's escape from a rape conviction was the testimony of Woburn women Mrs. Johnson, a midwife, and Marjorie Clark. In their original testimony they had stated with Mary Bacon and Rebecca Tidd that they had found "sum cors of nature" when they examined Elizabeth. But in a second document included in the county court files, the two eighty-year-old women cast doubt on Elizabeth's story. They testified that they had asked Elizabeth if Benjamin's breeches were down and she had said no. She had told them that she did not cry out because she was afraid "he should knock her head," but on their asking if he had anything in his hand she replied he had not. To this evidence that argued against rape they added this statement:

We also desire that writen [writing] which is in court wherin is some thing which we did object against in open court which we fear was not taken notice of by sd magistrates[.] but the truth of what we can is ther was some smale show but we canot accuse the young man therby[.] it was so smale it might be the scratch of a pine for ought we know.²⁹

These two women had done their best to protect Benjamin Simonds from the rape charge.

²⁸pulsifer, 3:158-59.

²⁹File 71.

Did their adamancy have anything to do with their long-term relationship with Benjamin's mother? Midwife Susan Johnson's relationship is not explicit in the records, but we know that Judith Simonds's deceased husband had been a client of Johnson's deceased husband Captain Edward Johnson (see chapter 4). Marjorie Clark's relationship with Judith Simonds appears in several places in the records. They had lived as neighbors at least from the late 1650s and had testified together in various neighborhood issues.³⁰ Simonds's current plight must have affected Clark. In a petition to the county court requesting mercy for her son, the "adged and very weekly" widow Simonds revealed that while Benjamin was in jail in Boston, her family had sickened with the flux. One child had died and two more nearly did. Benjamin "is the cheife help I now have in my affliction." She begged "that as much favour and tendernes as may be might be used toward my sone so that he might not be discouradged." She closed by informing the court that "it is ye first tyme that ever any of my Children came befor authority for any misdemenor."³¹ While these women do not seem to have intended

³⁰See chapters 2 and 4.

³¹File 71. See also the fornication case of Anna Gardiner and Richard Nevers of Woburn in 1675. Anna described being overcome while sleeping by the fire after watching a sick person all night. However, she did not reveal the assault by her father's servant to her parents until two months before the baby was due. Susanna Johnson and Elizabeth Carter, who attended her in childbirth, testified that she had said she resisted completely "at first." Anna was sentenced to a £5 fine or 15 stripes, Richard to £10 or 30 stripes. Her father sued Nevers for "deflowring his daughter." He won a £20

to hurt Elizabeth Pierce, their protection of her assailant left her vulnerable to punishment. If Simonds had not attempted rape, then Elizabeth was guilty as well.

Other women used the authority they derived from their places in their communities to protect their children too. In 1669 Elizabeth Moore and Mary Maynard of Sudbury petitioned the court to commute their children's sentence of whipping for premarital fornication to a fine. The mothers asked the court "to consider the condition of yor poor petitioners for those persons our children." They asked this "in regard of the inabillitie of the persons that are to suffer," and added that if the court did substitute a fine for the whippings, "it will be very accepable to us."³²

The unsigned testimonies of a mother and son from around 1650 show how the mother defended her son from a master's accusation that the boy had encouraged his maid to run away. The boy complained that the man had threatened him "more then was fiting for him to doe unles he had grounds" when both the boy's parents were away. He expected that if either of his parents had been home, they would have protected him. The

settlement that was respited. A year later the county court ordered Nevers to pay it. Finally, on September 4, 1677, on appeal to the Court of Assistants, Never's attorney Matthew Johnson was able to get the judgment overturned. The jury reversed it and ordered Richard Gardiner to pay costs. Pulsifer 3: 120, 126, 160, 163; files 70, 71; Noble and Cronin, *Court of Assistants*, 1:100.

³²File 51. Mary Maynard's husband was alive and gave bond for their daughter. The outcome of this case is unknown because the court order book for this period was destroyed.

mother moved comfortably over the paths and roads in her community investigating and refuting the master's charges. Taking authority onto herself, she went to the main witness and questioned her. Then she confronted her son's accuser. When she heard that the master gave "out report that i sufered my children to take away his wifes gd name and to defame hir," she brought two witnesses of her own to confront the woman and explain that the woman's own maid had spread the story.³³ This unknown mother's success is signaled by what little evidence survives. The case never came formally before the court, having yielded to her efforts to vindicate herself and her son.

This goodwife also allows us to see the way in which some women used law-like trappings to buttress their informal authority in the community. In bringing two witnesses when she went to confront her accuser she mirrored the formal law's requirement for two witnesses in capital cases.³⁴ Other women also used forms similar to those used in court to reinforce their own authority. Madame Hopkins had Nicholas Wallis brought to court "for frequenting her house after warneing to ye contrary," as well as for getting her maid pregnant.³⁵ Like men, women brought witnesses with them when

³³Case of Goodman Line's maid, file 7.

³⁴George L. Haskins, *Law and Authority in Early Massachusetts*, (New York: MacMillan, 1960), 152-53.

³⁵File 12. This language might also have resulted from the transcription of the formal testimony she gave.

they took on the mantle of authority. Skillful woman Elizabeth Hunt had two women with her when she went to examine a child who had been assaulted.³⁶ When Ann Blanchard wrote and signed a response to an attachment for Peter Durand's goods (who had died while her husband's servant) she was fulfilling her role as deputy husband. When Mary Andrews added her mark to Blanchard's signature, she was exhibiting the authority of one woman confirming the actions of another.³⁷ Dissatisfied with the quality of the yarn Goody Hannum had spun for her, Mary Elmer had Abigail Bartlett come inspect it for her. Bartlett served both as an expert witness and as a second witness to make any future testimony more convincing.³⁸

The county court records yield many instances of women taking authority as neighbors. They watched for, and reported, misbehavior; they acted as witnesses when asked; and they questioned inappropriate actions. As seen in chapter 2, Phoebe Page was caught in a web of formal and informal censure for her over-familiarity with a number of men.³⁹ Her loss of the slander case and conviction for misbehavior vindicated the roles of the neighboring women who had convicted her within her community. When the Charlestown

³⁶File 12. See below.

³⁷Ulrich, *Good Wives*, 35-50; file 7.

³⁸Testimony of Mary Elmer, file 12.

³⁹Pulsifer, 1:6-8.

constable ordered Elizabeth Haddun and her family evicted from the town, Haddun requested a neighboring woman to come to witness, along with two men, the mistress of the house where she lived throwing Haddun's belongings into the street. The neighbor's signature appears on the court testimony along with the two men's.⁴⁰ A case involving the forbidden courtship of a young woman reveals the authority of both mothers and neighbors. In confronting him, the father complained that the suitor had courted "at unseasonable times of the night contrary to the knowledge of either Father mother or any of the Family." A few days later at a neighbor's house, after the suitor drank a toast to the young woman, "the woman of the house" questioned his singling her out, demanding "of him why hee dranke to her rather then to the other sister."⁴¹ Guarding young women involved mothers and female neighbors as well as men.

The intimate involvement of neighbors, particularly female neighbors, in each other's lives appears in the records of a slander case that resulted from witchcraft accusations against Winifred Holman of Cambridge and her daughter. The Gibson family lived across the road from the Holmans. Their daughter Rebecca Stearns endured fits and the loss of a child that she and her family blamed on the

⁴⁰Pulsifer, 1:127; March 30, 1657 statement, file 20.

⁴¹Pulsifer, 1:156; testimony of John Martine and Phineas Upham, file 17.

Holmans. The family closely observed the Holmans and reported seeing Winifred walking up and down in front of her house and picking things up off the ground, running around as though she were trying to catch a chicken, hoeing constantly at a single patch of ground, and sitting at a water hole pouring water from one dish to another. Gibson reported that his wife observed "Mrs. Holman doing some strange things" and told the court to "examine why she goeth out at night to swamps and highways."⁴² But neighborhood intimacy also helped the Holmans escape the charges. A group of neighbors, eleven men and thirteen women, testified that they had never suspected her of witchcraft, that she went regularly to church, and "is diligent in her calling." Another woman, who lived further away, volunteered to explain one odd set of behaviors after hearing it described in court that afternoon. She reported that the Holmans' well was stopped up and, afraid to go to their neighbors for water, they had done their best to get what they could with a dish.⁴³ Constant surveillance by neighbors was a fact of life for the Holmans. While it was used to substantiate the frightening accusation of witchcraft, it also worked to vindicate them when most of

⁴²Testimony against Winifred and Mary Holman, file 25. For transcriptions of the documents in this case see David D. Hall, *Witch-Hunting in Seventeenth-Century New England: A Documentary History, 1638-1692* (Boston: Northeastern University Press, 1991), 134-46. See John Demos's discussion in *Entertaining Satan*, 194, 285.

⁴³Testimony of Elizabeth Bowers, file 25.

their neighbors found their activities blameless. Women were central in both the accusation and the vindication brought by watching neighbors.

Women's confidence in their own authority can be seen in two cases in which women delivered their judgments about appropriate male and female behavior to the court. In her testimony that Thomas Blanchard had taken very good care of his mother-in-law on their passage over from England, forty-four year old Frances Cooke was comfortable informing the court that "his trouble and paynes wth her was such that it was unseemely for a man to doe, but there was no other save that little helplesse gerle her kinsweoman."⁴⁴ In a divorce case in which the wife preferred to sleep in the barn with the oxen than with her husband, Margaret Allen revealed in her testimony about the wife's actions that "she tooke ocausion to speake with her about her husband and perswaded her to show and express love unto him." Another goodwife testified to the care the husband and his mother had taken of his wife, treating her like a woman who "had layen in."⁴⁵ These women's testimony was critical in showing that the wife's sexual fear of her husband was not based on any reasonable standard: the court agreed with them and ordered husband and wife to live together according to the marriage

⁴⁴File 7. This was an appeal of a debt case regarding a promise by Blanchard's mother-in-law to pay another man £20.

⁴⁵File 12; Pulsifer, 1:101 (June 9, 1656).

covenant. In both cases, the women comfortably informed the male authorities how they had judged these situations. In the second case they tried to use their authority over the woman to improve the relationship between husband and wife. Like the male authorities, they advocated the continuation of the marriage.

The cases in which women's authority appeared were not always unequivocal. In the same way that men sometimes battled out deep anger against each other in the county court, neighborhood women had their share of disputes between implacable enemies. A few of these were serious enough to surface in the county court. Whatever the dispute between Rebecca Sergeant and Sarah Moulton, more women than men were summoned to testify before the county court.⁴⁶ Unfortunately the case was not recorded at that court and nothing else survives of it. A conflict between James Barrett and his wife on one side and Sarah Bucknam on the other, explored in chapter 4, culminated in Bucknam's conviction for being overly familiar with a male neighbor. An important part of the evidence against Bucknam, given particularly by female witnesses, involved judgments about the appropriateness of Bucknam's relationship with her male neighbor. The women depicted a reciprocal relationship more suitable to a husband and wife: she cooked and washed for him, while he got water

⁴⁶File 3.

and wood for her and mended her shoes.⁴⁷ Goody Barrett's anger at her friend and the disapproval of some of Bucknam's female neighbors had important negative consequences for Bucknam. Finally, Goodwife Stratton, accused of witchcraft, was, like the Holmans, also a victim of the testimony of women in her community who suspected her because of her great familiarity with executed witch Margaret Jones. She was then vindicated by the testimony of other women.⁴⁸

Like all authority, women's authority was limited. Like men's informal authority, it was subject to the power of the magistrates and the male legal structure. In addition, individual women were subject to their husbands. The magistrates acted to restrain women and men who stepped outside their appropriate roles. Cases of slander, railing, or speaking against the magistrates often indicated situations where the individual exercise of authority came up against the formal authority of the court. Goodwife and Goodman Stratton were convicted of speaking evil of the "Magistrates, ministers, and members," when they protested too loudly that Margaret Jones should not have been executed as a witch.⁴⁹ Just as Phoebe Page had attempted to turn the tables on her accusers with a slander case, several slander cases were brought to refute accusations by women. In 1652,

⁴⁷Pulsifer, 1:31, 32; files 7, 16.

⁴⁸Pulsifer, 1:4-5, file 2.

⁴⁹Pulsifer, 1:4-5, file 2.

the same Mrs. Holman who was later accused of witchcraft told her neighbors that Henry Prentice and his wife had stolen her husband's hay and milked her cow. Prentice sued and Mrs. Holman and her husband William were convicted for slander.⁵⁰ Goody Goble and her husband were convicted of defamation for saying that their longtime enemy Richard Temple had sworn a false oath.⁵¹ The wife of Rowland Layhorne ran afoul of the magistrates for making a disturbance in church and washing her clothes on the Sabbath.⁵² And though Mr. Mansfield and his wife Mary were both presented for breach of the peace, only Mary was fined. Several years later she confessed to exorbitant carriage and reproachful speeches against authority and was whipped twenty lashes.⁵³ As Mary Beth Norton has argued, the gendered nature of power that gave women important roles in families and neighborhoods also made their pushing the boundaries of these roles potentially dangerous and disruptive.⁵⁴ Like men, women needed to exercise careful judgment to decide when to pit their

⁵⁰Pulsifer, 1:32, file 1.

⁵¹Pulsifer, 1:27.

⁵²Pulsifer, 1:51.

⁵³Pulsifer, 1:83.

⁵⁴*Founding Mothers and Fathers*, passim. Jane Neill Kamensky depicts women's importance as lying in their providing models of subjection. Their violation of appropriate speech was dangerous because it threatened the social order that their subjection shored up, "Governing the Tongue: Speech and Society in Early New England" (Ph.D. diss., Yale University, 1993), chap. 3.

opinions against those of people in their communities or (even more dangerous) the decisions of county leaders.

The final two cases this chapter will treat involve sexual assault by Indian men on white girls and allow us to consider the way in which women's normal authority may have had an added importance in situations that included people of different races. Here, at the point of interaction that Kathleen Brown has called a gender frontier, white women helped to buttress white control over Indian and African people, both through their oversight of relations outside of court and their roles in court cases that imposed English power.⁵⁵ The highly unusual assault of a white child by an Indian allows a glimpse of the terrible inversions the English believed possible if English hierarchical power failed and shows the critical importance of the contributions of white women to maintaining that power.⁵⁶

Sexual assault cases, like the Richardson one that began this chapter, provide an unusual opportunity to see women's place in the normally male-dominated justice system. They reverse the usual sex ratio of participants in court cases where men were in the majority. Here women took center stage

⁵⁵Kathleen M. Brown, "Brave New Worlds: Women's and Gender History," *William and Mary Quarterly* 50 (1993): 311-28.

⁵⁶For an example of English fears of wilderness and savagery see Michael Zuckerman, "Pilgrims in the Wilderness: Community, Modernity, and the Maypole at Merry Mount," *New England Quarterly* 50 (1977): 255-77.

and men, except the defendant and the magistrates, were on the sidelines. As mothers, mistresses, and neighbors, women prevented and reported sexual assaults. As skillful women they acted as both skilled medical practitioners treating victims and as expert witnesses providing testimony to male authorities. Having examined the girls with the expertise they had acquired in their roles as midwives and healers, these women gave testimony that would decide the life or death issue of whether a girl under the age of ten had been raped.⁵⁷ The two cases that follow, which occurred in Concord, Massachusetts, reveal the sometimes close connections between Indians and white women on the frontier of English settlement. The second case also returns us to a consideration of women's authority within white communities and families by demonstrating its limitations. Women's authority relied on the prescribed use of patriarchal power. The household system of governance, buttressed by informal neighborhood control, was vulnerable to a despotic man who abused patriarchal power.

A set of sexual assaults on children that occurred in

⁵⁷Although there was no law in the 1648 law code about the rape of a girl under 10, laws in 1642 and 1669 both explicitly made it a capital offence whether it was consensual or not. This was also the common law position. See Norton, *Founding Mothers and Fathers*, 348; Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692* (Amherst: University of Massachusetts Press, 1993), 31-32; and Haskins, *Law and Authority*, 150-51. See also Barbara S. Lindemann, "'To Ravish and Carnally Know': Rape in Eighteenth-Century Massachusetts," *Signs* 10 (1984): 63-82.

Boston in the early years of the Massachusetts Bay Colony helped determine court policy on the crime and reveals the importance given to the responsibility of adults to protect children. In 1642 three white men were tried by the Court of Assistants for the sexual abuse of two sisters aged nine and under. The magistrates responded with severe punishment of the offenders, a new law that made the rape of a girl under ten a capital offence, and according to John Winthrop, the severe condemnation of the girls' father. They believed him guilty of not protecting his daughters because he left them with former servants while he returned to England with their mother.⁵⁸ While John Winthrop characteristically considered the obligation of the father, the women in the cases that follow took responsibility for protecting children to themselves.

Compared to the normal business of the court, sexual assault cases were especially likely to involve both Indian men and white women. Women were disproportionately represented in all assault cases (see tables 3.1 and 3.2). Out of the 785 cases and administrative actions that occurred in the first twelve years of the Middlesex county court, twenty-six were assault cases, a category that includes any kind of physical attack and physical and verbal abuse. Although only about thirteen percent of all participants in

⁵⁸Norton, *Founding Mothers and Fathers*, 107-8; Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England* (Boston, 1853): 2:12-13.

county court cases were women, women or girls were involved in almost two-thirds of assault cases as defendants or victims. Of these, three were sexual assaults on girls ten or under.

Table 3.1

Assault Cases, 1649-1660

<u>Total Cases:</u>	785
Administrative actions:	220
Civil and criminal cases:	565
 <u>Total Assaults:</u>	 26
Assault:	7
Abuse:	7
Fornication: ^a	1
Sexual assault on adult: ^b	3
Sexual assault on child:	3
Wife abuse: ^c	5

^a 13 yr. old girl testified she had not consented.

^b Includes assault of woman on man categorized as sexual misbehavior.

^c Includes one case where husband admitted kicking his wife when in court for his wife's disorderly conduct.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 1:1-223; Middlesex County Court folio files.

Table 3.2

Breakdown of Assaults by Attacker and Victim, 1649-1660

Men attacking women:	13
Men attacking men:	8
Men attacking unknown:	2
Women attacking men:	2
Man attacking man & woman:	1

Table 3.3

Cases with African and Indian Defendants, 1649-1660

	Indian	African
Debt:	4 (5 defendants) ^a	0
Fornication:	1	2 (3 defendants)
Sexual assault:	2	0
Theft:	2	0
TOTAL:	9	2

^aIn the case with 2 Indian defendants, 3 different Indians are listed as debtors in the bill describing the debt in the folio records for a total of five Indians mentioned in the case.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 1:1-223; Middlesex County Court folio files.

Cases involving Indians as defendants made up a very small proportion of all the civil and criminal cases that came before the county court in its first twelve years: nine of 565 (see table 3.3). These prosecutions included one for fornication, four for debt, two for theft, and two for sexual assault. All, except the debt category, represented a much higher proportion than that found for whites. Two of the three men who came to court for sexually assaulting white children were Indians and two of the nine cases in which Indians were defendants were sexual assaults. Whether it was the Indians' status as servants and laborers or their race that made them more vulnerable to prosecution, the authority of white women, testifying as female experts, determined their fates. It was also in these cases where evidence of direct confrontations between white women and Indian men was most likely to be preserved.

In June of 1660 Indian Thomas Dublet was convicted for "abuse offered to the body of" Elizabeth Stow and sentenced to be fined £20 or sold to raise this sum.⁵⁹ Goodwife Mary

⁵⁹Pulsifer 1:218. Dublet appeared in 1676 as one of the Christian Indian go-betweens from Nashoba in the negotiation of Mary Rowlandson's release. Mary Rowlandson, "The Sovereignty and Goodness of God," in Alden T. Vaughan and Edward W. Clark, eds., *Puritans Among the Indians: Accounts of Captivity and Redemption, 1676-1724* (Cambridge: Harvard University Press, 1981), 61, 65, 67. He was a signatory on a quitclaim to a tract of land in Nashoba in 1686. Lemuel Shattuck, *History of the Town of Concord; Middlesex County, Massachusetts, from its Earliest Settlement to 1832* (1835; reprint, Clinton, Mo.: The Printery, 1971), 31-32 and Neal Salisbury, electronic mail to author, May 26, 1996.

How had been watching the Stow children while their parents were away. This forty-year-old neighbor became the primary witness, and testified to the misbehavior of Dublet and the seven or eight-year-old Elizabeth Stow. Dublet was in the neighborhood working for Goody How's own husband in the Indian corn. Goody How testified that Thomas Dublet and the English girl had playacted at being married: she heard Elizabeth Stow say "Here comes my man thomas Dublett & the indian answered . . . Here is my squa."⁶⁰ How was already concerned about Elizabeth's "uncivil" behavior, which she had earlier reported to the child's father, and she seems to have kept a sharp eye on the young people. After Dublet had spent two hours working in the field, Goody How saw him whispering with Elizabeth and heard him mention beads. But when the goodwife demanded if there was any giving or bartering between them, both young man and child denied it. Despite her watchfulness, while she was distracted by one of the younger children, Elizabeth and Thomas Dublet went out in a cornfield "out of sight or call." There Doublet attempted to have intercourse with Elizabeth, letting her go when she cried out in pain.

Goodwife Mary How played two roles in this case: protector and skillful woman. As neighbor and child minder she attempted to protect the child Elizabeth Stow from harm, prevent her misbehavior, and instruct her in appropriate ways

⁶⁰File 23.

to behave. She had "often seen & observed wanton & uncivill Caridges by the foresaid Elizabeth Stow," and had told her father who corrected her.⁶¹ When How was unable to protect the child, she made sure the attacker was punished by providing testimony to the court. Her consciousness of the official dimensions of her role appears in the circumspection with which she handled the whole affair. When Dublet returned an hour after Goody How got the story out of Elizabeth, How "said nothing of discovery to him least hee should withdraw him selfe." She played her role as skillful woman in examining the child after the assault and providing expert testimony, along with another woman, to the court. How's testimony, given to magistrate Daniel Gookin five days later, was carefully calibrated: she noted "signes of seed upon the childs wombe & some attempt of breaches in entering her body but not very farr." Expressed this way, Dublet's offense was right on the legal line between abuse and rape. A second woman, Thomsin Wheat, examined Elizabeth Stow on the day of the events and her testimony, given to Gookin the same day as How's, probably decided the court in favor of the lesser crime. The forty-five year old Wheat reported that she had been called in to view Elizabeth Stow's body and though she found "manifest tokens yt shee had not long before beene medled withall by mankind" she did not perceive "any

⁶¹Lascivious is crossed out and replaced with uncivil. Magistrate Daniel Gookin took How's and Wheat's testimony and both signed with marks, file 23.

harme the child had."

Goodwife Mary How's double role in the assault on Elizabeth Stow, as skillful woman witness and child minder, appears in her surviving testimony, which is labeled as both a deposition and an examination. Not only did she depose on Thomas Dublet's crime but she was examined on her own conduct. Colonial authorities took the responsibility of adults to protect children seriously and it fell more heavily on women because they spent more time with children. Her description of her own actions has a self-justifying tone. She explained that she had watched Elizabeth and Thomas carefully; when they sneaked away she claimed she "called aloud for the girle but no answer was made."⁶² She justified her neglect by explaining that her other duties had prevented her from keeping as close a watch as necessary.

The fact that Dublet was an Indian did not change How's double responsibility, but it did inform the situation in several ways. Thomas and Elizabeth's discussion about beads and How's questions about giving or bartering suggests trading between English and Indians at the household level, perhaps using wampum. It may also have indicated an aspect of Indian or English courtship. How's care in not saying anything to Dublet about the crime "least hee should withdraw himselfe," reveals that Indians may have been more able than English malefactors to remove themselves from English

⁶²File 23.

authority, or at least that How thought so. The gender frontier is prominent here, with conflicting sexual mores and gender divisions of labor. It is possible that Dublet was unfamiliar with English mores. We do not know how old he was; his behavior may have been consistent with the sexual experimentation allowed among adolescents by Eastern Indian groups.⁶³ The English influence on Dublet is clearly visible in the labor he was performing. Tending Indian corn was women's work among New England Indians and it shows how gender roles had been drastically altered by interaction with the English.⁶⁴ While her husband had Dublet tending corn, Elizabeth How acted as the agent of English authority in attempting to impose English standards of sexual behavior on him.

The final case also involves white women's role in the imposition of English authority on an Indian. In addition,

⁶³James Axtell states that young eastern Indians engaged in sexual exploration, sometimes before puberty, with their parents' tacit permission. Dublet's behavior might have been consistent with this pattern. However, taking this action in the face of How's prohibition was not in keeping with Indian mores. James Axtell, ed., *The Indian Peoples of Eastern America: A Documentary History of the Sexes* (New York: Oxford University Press, 1981), 71 and *The Invasion Within: The Contest of Cultures in Colonial North America* (New York: Oxford University Press, 1985), 169. Elizabeth Stow's adult clothing may also have fooled Dublet into thinking she was older than she was.

⁶⁴I am grateful to Ann Marie Plane for pointing this out. For women's responsibility for agriculture in southern New England, see Neal Salisbury, *Manitou and Providence: Indians, Europeans, and the Making of New England, 1500-1643* (New York: Oxford University Press, 1982), 39-41.

it concludes the discussion of women's agency and authority by showing some of the ambiguities and vulnerabilities that colonial New England's Puritan patriarchy meant for women. On April 3, 1655 Pombassawa, an Indian, was ordered whipped twelve stripes by the Middlesex County, Massachusetts court for "shamefull abuse offered to the body" of five or six year old Deborah Draper.⁶⁵ The scant court record obscures the lengthy process by which an incident that occurred near a Concord swamp came to be determined in the county court. Further, these official documents completely obscure the importance of women to the final outcome of the action. The case against Pombassawa rested entirely on the testimony of three English women who had come to examine Deborah's body five or six years before and on the now eleven-year-old Deborah's own relation. Neither expert witnesses nor victim gave a name to the Indian or indicated that they knew who he was. No record survives to indicate how he was identified or captured. Unidentified in the testimony, he seems to represent the broad threat to the Puritan hierarchy seen in the wilderness. The record of his prosecution shows the importance women had in helping to maintain the hierarchy.

Skillful woman Elizabeth Hunt brought two other women with her when she was called to examine the little girl, and they later corroborated her testimony. Hunt reported that she went to Roger Draper's house about three weeks after an

⁶⁵Pulsifer, 1;171; file 13.

Indian had abused his daughter Deborah. Deborah's mother told Hunt that her daughter was very frightened. Hunt found the little girl "full of payne in her backe & heer belly & much wasted of her flesh" from the sexual assault, but she found no evidence of penetration. Deborah's testimony was even more frightening. The eleven year old girl's statement, looking back over five years, is both straight forward and demonstrates the limited language available to her. In the spring, around planting time, "an Indian got heer downe...& layd upon heer & pissed upon her belly & made her much afrayd." He told her that if she called for help or told her parents he would kill her.⁶⁶

At the time of Goodwife Elizabeth Hunt's visit to the child Deborah Draper, the primary concern of all the women involved must have been Deborah's health. Even in Goody Hunt's limited testimony we get a sense of Deborah's mother consulting with Hunt as a healer, reporting to her Deborah's state of mind, and then watching anxiously as Hunt examined her daughter. But Hunt and her companions also formed a formidable committee of women, that would both heal and give expert witness should the need arise. The confidence these women had in their roles as skilled women is evident in their testimony. It is matter of fact; Hunt clearly delineates her area of expertise and precisely states the exact nature of the crime that occurred.

⁶⁶File 13.

The emphasis on the careful description of the abuse that took place in the assaults by Thomas Dublet and Pombassawa, as determined by skillful women, demonstrates these women's limited but real power. In certain circumstances, white women wielded extreme power over men of any race. Their expert testimony could bring whipping, monetary loss, and on occasion even determine the life or death of a man who attacked a child or committed adultery. This power was probably ameliorated by a man's high status, since white male defendants were likely to be servants, and though three cases do not provide enough evidence, it may be significant that two of the three accused assailants in sexual assaults on children were Indians.⁶⁷ Whatever the answer, in these cases at least, sexual assault was a critical point of conjunction between gender and race. White women here acted as part of the colonial power structure that imposed English law, culture, and government on Indians who moved in and out of the purview of colonial authority, especially in frontier towns like Concord. These cases highlight not only the vulnerability of children who were not protected, but the vulnerability of Indian men in Middlesex County to swifter and surer punishment than white men could expect. The Draper case even raises the possibility that

⁶⁷Norton suggests that women might have thought they were more likely to be believed when they accused an Indian or black, and so brought these attacks to the authorities more often, *Founding Mothers and Fathers*, 470n. See chapter 5 for treatment of people of color in fornication cases.

Indians could provide scapegoats for white men.

It is possible that the case against Pombassawa became necessary to explain Deborah's illness in the face of other suspicious situations in the Draper family and to prevent Roger Draper from being blamed for problems in his household. Two factors set the Draper case apart from the other two child sexual assault cases discussed in this chapter: the unsavory nature of the Draper family and the delay in bringing the case to the attention of both the court and the community's skillful women. The delays were unusual, and perhaps suspicious, and were noted clearly in Goodwife Elizabeth Hunt's testimony. The five or six year delay bringing the case to court did not occur in any of the other twenty-six assault cases recorded for the period.⁶⁸ The three week delay before Deborah Draper was examined was not seen in the other two child sexual assault cases, where the resort to authorities occurred soon after the crime. Elizabeth How and Thomsin Wheat examined Elizabeth Stow on the day she was attacked and gave their testimony to a magistrate five days later. Goodwife Richardson was on hand to prevent the sexual assault on her niece and so did not testify against the young man who was tried at the next court session for running away.

⁶⁸Though see the case of William Bucknam in chapter 4 that included assaults that had taken place more than ten years before the court case, as well as recent ones. See also Elizabeth Read's "assault" on William Locke in chapter 4. Testimony regarding it appeared in court four years after it occurred, but it was considered sexual misbehavior, rather than assault, by the court.

In contrast to the well-established Richardson and Stow families, the Draper family was in some sense marginal to Concord. The women who came to examine Deborah Draper that day were also members of well-established families. The husbands of Goody Hunt and her colleagues were middling town founders and officials with substantial land holdings.⁶⁹ Goodwife Draper should also have been among this favored group; her husband was an early town proprietor. But something must have separated the family from other Concord families early, because though Roger Draper was a town proprietor, he was never called as a juror nor held a town office.⁷⁰ In 1663, Goodwife Draper was accused by several Indians of selling liquor to other Indians.⁷¹

Another case that appeared in county court may explain the Draper family's odd isolation and the long delay in

⁶⁹Her colleagues were Mary Wheeler and Ellen Blood. For information on their status see James Savage, *A Genealogical Dictionary of the First Settlers of New England*, 4 vols. (1860-62; reprint, Baltimore: Genealogical Publishing Company, 1965), 4:501 and Shattuck, *History of Concord*, 364, 386.

⁷⁰Draper signed a bridge petition as a town proprietor. Charles H. Walcott, *Concord in the Colonial Period: 1635-1689* (Boston, 1884), 38. After 1647 jurors did not have to be church members; see chapter 1.

⁷¹Pulsifer, 1:286 (June 16, 1663). Mary Draper denied the accusations even when the court pressured her to "purge herself." The typical fine for this offence was a hefty £5 (e.g. Pulsifer, 1:285) and her fear of her husband's wrath at this might have been greater than her fear of God's wrath. She, her husband, and the Indian witnesses, with "certificates of" the Indians' "Honesty, & Knowledge of an oath" were ordered to appear at the next court. See Introduction.

bringing Deborah's case to court. In 1657, seven years after the assault on Deborah Draper, and two years after it appeared in court, her father was convicted of beating his wife. Roger Draper was fined and gave bond for his good behavior to his wife and to all people of the commonweal. He acknowledged his evil in court and the magistrates solemnly admonished him "to beware of his passionate distemper for the future." Six months later he was released from his bond.⁷²

Though violence within bounds was an accepted part of colonial society, violence out of bounds disrupted order and required prosecution.⁷³ While the court record contains Draper, as the magistrates' actions contained him, the testimony given reveals the starkness of his crime. Settling into sleep in the loft of his father's home, twenty-year-old Adam Draper was roused by angry words: "Beggar" Roger Draper yelled at his wife as he struck her twice on the mouth. Goody Draper called to her son that she was afraid his father would kill her. Adam moved to respond and saw through the opening that Roger Draper had his wife by the throat. Adam's testimony does not indicate whether he stayed in the loft: perhaps his father's threat that he would make him regret it if he came down kept him there. Neighbors finally stopped the beating when Goodwife Draper attempted to flee her house.

⁷²Pulsifer 1:135, 142.

⁷³See Susan Dwyer Amussen, "'Being Stirred to Much Unquietness:' Violence and Domestic Violence in Early Modern England," *Journal of Women's History* 6 (1994): 70-89.

Hearing her cry out at nine o'clock at night John [W]allas and his wife came to the house and found her at the door with her husband dragging her back into the house.⁷⁴ At first she would not go because she was afraid for her life, but eventually he persuaded her to return. The [W]allases and Joseph Dane reported the condition she was in: her hair was in disarray around her eyes, her face was bloody from broken lips, her nose was bloody, and her throat was scratched.⁷⁵

Although wife beating was illegal in Massachusetts Bay, a certain amount of physical correction was probably acceptable both to watching neighbors and to the grand jurymen who presented Roger Draper.⁷⁶ However, Draper was unable to control his violent impulses and keep them within the bounds allowed for a household head. His uncontrolled rage against his wife in 1657 raises the question of whether he had anything to do with his daughter's injuries in 1650.

Draper's abuse of his wife also reminds us that while goodwives had clearly defined roles and authority, this authority rested in part on the appropriate behavior of men. Elizabeth Hunt and the women who came with her to the Draper house represented well-regulated households where women assumed authority that complemented male power. Roger Draper

⁷⁴First letter is illegible.

⁷⁵Files 18, 19.

⁷⁶Goodman Ball's 1657 admission that he kicked his wife appears to have ameliorated her behavior, but he was not charged with a crime. Pulsifer 1:137. See chapter 1. See Ulrich, *Good Wives*, 187-88.

deprived his wife of this authority through his outrageous behavior. Poorly regulated households were community threats for many reasons: not least of which was the loss of authority for women.

As the cases in this chapter show, colonial women had authority within carefully bounded limits. They exercised this authority over young people: both their children and servants; and over other women. Women had agency as skillful women, mothers, mistresses, and neighbors. Like most white members of the colonial hierarchy they were expected to obey their betters, but their subjugation was ameliorated by their own authority or expectation of future authority. But women's roles in the New England hierarchy were dependant on the appropriate behavior of patriarchs. Communities might subtly penalize men like Roger Draper for abusing their power but neighbors only stepped in when his abuse of his dependants spilled out of his house. Interracial interactions gave added importance to women's roles in enforcement. At a juncture where illegal behavior was particularly frightening, with its strong suggestion of the anarchy of the wilderness, women were partners with men in maintaining English rule. For Thomas Dublet and Pombassawa, women's authority meant that white power to shape their world was that much stronger. For young women, women's authority was also an important force. For Jane Evens, abused by the man she worked for, the authority of women meant redress. For Phoebe Page it meant the confirmation of accusations of

promiscuity in county court. And for young Ruth Richardson it meant being confident that calling out for her aunt and mistress would mean protection from John Glasier. His dame would deal with him.

CHAPTER IV

TOWNS TURNED UPSIDE DOWN: THE DISRUPTION OF AUTHORITY IN MALDEN AND WOBURN

In Puritan New England, social order rested on what Mary Beth Norton has called "a unified theory of power," the concept that both family and state drew their power from "the father's governance of his subordinates."¹ In the previous chapters we have seen how the hierarchical social structure of Middlesex county rested on the small hierarchies of families, on the horizontal as well as vertical connections between people in communities, on the formal authority of government officials, and on the interconnections between all these levels. This chapter explores the way these interconnections were revealed in disputes that occurred in the towns of Malden and Woburn. In Malden the conflict occurred between the leaders of the church and the General Court. In Woburn it was between factions of town leaders. During the conflicts in each town, an increased number of cases appeared before the county court. Internal dissension,

¹Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), 8. See also Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (Boston: 1944; revised ed., New York: Harper and Row, 1966), 17-21 and for English origins, Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Oxford University Press, 1988), 1-7.

jealousies, and normal community conflicts intersected with the crises among leaders to create disruptions that revealed the interdependence of households, communities, and government. Informal control became less effective; situations were more likely to get out of normal bounds and result in litigation or prosecution. While town officials faced slander at the meeting house and in the military training field, town women found themselves unable to maintain their respected positions or contain the misbehavior of young people. Disorder threatened not only the male realms of town, county, and colony government, but the shared realms of household and community, and the female-watched realm of sexuality when the towns of Malden and Woburn were "turned upside down."²

This focus on particular towns takes us into the province of community studies. New England town studies provide views of a variety of seventeenth-century communities. Stephen Innes suggests three broad categories of settlement: subsistence farming villages such as Plymouth, Andover, and Dedham; urbanized coastal towns such as Salem and Boston; and commercial agricultural towns such as

²"Towns turned upside down" is drawn from the phrase "the world turned upside down," Acts:17:1-6. The phrase was used by various writers during the English Revolution and is the title of Christopher Hill's book about the revolution, *The World Turned Upside Down: Radical Ideas during the English Revolution* (New York: Viking Press, 1972). The phrase was used in England to denote the result of religious and social radicalism.

Springfield.³ Studies of eighteenth-century towns reveal the persistence of a broadly-defined community, though less closed and cohesive than that found in seventeenth-century Dedham by Kenneth Lockridge.⁴ Historians have found "communal breakdown," continuity and persistence, and individualistic commercial endeavor in different New England communities and some of the same ones over time. All three were present in Middlesex. While attempting to avoid these categorizations, this study adds an understanding of the way communities functioned on a day-to-day level, emphasizing the important places women held in the processes of community life.⁵

One of the important lessons I draw from the town study

³John Demos, *A Little Commonwealth: Family Life in Plymouth Colony*, (New York: Oxford University Press, 1970); Philip J. Greven Jr., *Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts* (Ithaca: Cornell University Press, 1970); Kenneth A. Lockridge, *A New England Town: The First Hundred Years, Dedham, Massachusetts, 1636-1736* (New York: W. W. Norton, 1970; expanded, 1985); Paul Boyer and Stephen Nissenbaum, *Salem Possessed: The Social Origins of Witchcraft* (Cambridge: Harvard University Press, 1974); Darrett B. Rutman, *Winthrop's Boston: A Portrait of a Puritan Town, 1630-1649* (Chapel Hill: University of North Carolina Press, 1965); Stephen Innes, *Labor in a New Land: Economy and Society in Seventeenth-Century Springfield* (Princeton, N. J.: Princeton University Press, 1983), xvi.

⁴Christine Leigh Heyrman, *Commerce and Culture: The Maritime Communities of Colonial Massachusetts, 1690-1750* (New York: W. W. Norton, 1984); Michael Zuckerman, *Peaceable Kingdoms: New England Towns in the Eighteenth Century* (New York: Alfred A. Knopf, 1970); and Lockridge, *A New England Town*.

⁵The quoted phrase is Heyrman's, *Commerce and Culture*, 16. See Darrett Rutman, "Assessing the Little Communities of Early America," *William and Mary Quarterly* 43 (1986): 163-178, for an overview of colonial communities and their study.

literature is that conflict was a normal part of community life.⁶ Paul Boyer and Stephen Nissenbaum argue that the internal bickering in Salem Village was not unusual but that the anomalous position of the village, as part of Salem Town but with some self-determination with regard to its church, made it "almost helpless in coping with whatever disputes might arise."⁷ The conflicts and misbehaviors from Malden and Woburn that appear in the county court were not unusual, in themselves necessarily, but the difficulties the towns were having among their leaders meant that they were more difficult to resolve than usual, and therefore more likely to escalate to the point where they would appear at the court.

In 1651 the Malden church was involved in a dispute with

⁶John Demos and Helena M. Wall view conflict as indicative of problems. Demos hypothesizes that the strain of maintaining family harmony was relieved through conflicts with neighbors, *Little Commonwealth*, 49-51. Wall argues that the sacrifice of private family life to the community resulted in greater conflict in the community, *Fierce Communion: Family and Community in Early America* (Harvard University Press: Cambridge, 1990), 126.

⁷Boyer and Nissenbaum, *Salem Possessed*, 51. Richard Gildrie discusses conflicts in Salem in "Contention in Salem: The Higginson-Nicholet Controversy, 1672-1676," *Essex Institute Historical Collections* 113 (1977): 117-39 and "Salem Society and Politics in the 1680s," *Essex Institute Historical Collections* 114 (1978): 185-206. James T. Lemon depicts conflict as a typical part of New England communities because of "the difficulty of resolving contradictions of exclusiveness and inclusiveness within their communities," "Spatial Order: Households in Local Communities and Regions," in Jack P. Greene and J. R. Pole, eds., *Colonial British America* (Baltimore: Johns Hopkins University Press, 1984), 98-99. See Zuckerman, *Peaceable Kingdoms*, for a discussion of the way eighteenth-century towns dealt with conflict to retain "satisfactory community," 123-53.

the General Court over its ordination of Marmaduke Matthews. Over the next three years, four conflicts came to the county court that revealed that something had undermined Malden's ability to deal with conflict and misbehavior on a local level. I will begin with a description of Malden and then turn to a discussion of the church dispute before returning to the court cases that reveal the disruption that broke out in Malden.

In May 1649, the General Court granted the petition of "the Mysticke side men" for a new town, called Malden, to be set aside from the rest of Charlestown.⁸ The town encompassed most of the section of Charlestown that had been on the northeast side of the Mystic River, with a small section on the shore called Mystic Side remaining in Charlestown. The inhabitants of Mystic Side were to worship at the Malden church. Among the men who had signed a 1648 promise to set the bounds of the new town, and might be called "town fathers," the most prominent was Mr. Joseph Hills, originally a dealer in woolen cloth in Malden, England. He was forty-seven in 1649. In 1647 he had been Charlestown's deputy to the General Court and the speaker of the deputies.⁹ He had

⁸Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England*, 5 vols. (Boston, 1853), 2:274 (hereafter cited as *Mass. Records*).

⁹*Mass. Records*, 2:186; Deloraine Pendre Corey, *The History of Malden, Massachusetts, 1633-1785* (Malden, 1899), 107-8, 169. Other signers were Ralph Sprague, Edward Carrington, Thomas Squire, John Waite, James Greene, Abraham Hill, Thomas Osborne, John Lewis, and Thomas Caule.

extensive landholdings in Charlestown and Malden and was an elder in the Malden church. His second wife died in March of 1650 and he married widow Hannah Mellows in June of 1651. At that time he had nine children and she had five.¹⁰

The separation of Malden from Charlestown was amicable and by 1649 the founders had probably already gathered their church. They had difficulty getting a minister to come to them and for the first couple of years they relied on Mr. William Sargent, a lay preacher and church elder, and on students from Harvard College.¹¹ In 1650 Malden's church ordained Marmaduke Matthews as its pastor against the advice of neighboring churches and in the face of the General Court's rebuke of Matthews.¹²

Typically a church was gathered by at least seven men. These men had satisfied each other both of their knowledge of doctrine and that they had experienced saving grace. The gathering of the church was attended by ministers from other communities and civil magistrates who listened as the church

¹⁰Thomas Bellows Wyman, *The Genealogies and Estates of Charlestown, Massachusetts 1629-1818* (Boston, 1879; reprint, Somersworth, NH: New England History Press, 1982), 503, 665. Hills's will reveals an extensive estate in 1887, including land in Malden, Reading, and Dunstable, in addition to whatever he may have owned in Newbury, *New England Historic and Genealogical Register* 8 (1854):309-311.

¹¹Edward Johnson, *Wonder-Working Providence of Sions Savior in New-England* (London, 1654; facsimile, with an introduction by Edward J. Gallagher, Delmar, N. Y.: Scholars' Facsimiles & Reprints, 1974), 211 (hereafter cited as *WWP*).

¹²Corey, *Malden*, 136; Johnson, *WWP*, 211.

founders "stood forth and first confessed what the Lord had done for their poor souls." The visiting ministers and magistrates questioned them to be sure they were qualified to start a church. These first members then subscribed to the covenant. Finally, perhaps on a later date, members elected the minister or ministers and elders. According to the 1648 *Laws and Liberties*, each church had "free libertie of election and ordination of all her Officers, . . . Provided they be able, pious and orthodox."¹³ In Malden, only elders were chosen at first, as the church searched for a minister.

The ordination of Matthews brought the leaders of the town and church to the unwelcome attention of the General Court. While it was not legally required, the ordination of a minister was normally attended by a group of experts similar to those who came to the gathering of a church.¹⁴ However, the Malden church performed Matthews's ordination without the support of colony authorities or other churches and in the face of their disapproval. Matthews had already

¹³*The Laws and Liberties of Massachusetts* (1648; reprint, Cambridge: Harvard University Press, 1929), 18.

¹⁴ Edmund Morgan, *Visible Saints: The History of a Puritan Idea* (New York: New York University Press, 1963) and Johnson, *WWP*, 178-79. Johnson wrote that "a like Assembly," to that which attended the gathering of the church, attended the ordination of Woburn's minister, *WWP*, 179. New members were added after an interview with the elders, inquiry into their lives by church members, testimony before the church to the candidate's good behavior, the candidate's narration of the work of God in his or her soul, a profession of faith, the vote of members on admission, and the candidate's giving assent to the church covenant.

been brought before the General Court in 1649 when it refused the request of the inhabitants of Hull that he be allowed to return to their church and town, because of "severall erronious expressions, others weake, inconvenient, & unsafe." The court had also ordered that he be admonished by Governor Endicott in the name of the court.¹⁵

Matthews was a spiritist.¹⁶ He had arrived in Massachusetts Bay after the Antinomian controversy and had no known connection to the Antinomians, but their shared spiritism may have been the reason the General Court was so harsh with him. Among the beliefs that concerned the magistrates and deputies was his statement that there was no sin but unbelief. Though Matthews argued that this one sin contained all others, they feared that ungoverned behavior would result.¹⁷ Matthews also warned that the scriptures were

¹⁵Mass. Records, 2:276.

¹⁶See Philip F. Gura, *A Glimpse of Sion's Glory: Puritan Radicalism in New England, 1620-1660* (Middletown, Ct.: Wesleyan University Press, 1984), 67, 84; Richard Frothingham, *The History of Charlestown, Massachusetts* (Boston, 1845), 120-30; Corey, *Malden*, 132-58. Corey refers to and transcribes the documents regarding Matthews in Massachusetts Archives, Massachusetts State Archives, Boston, Massachusetts (hereafter cited as Mass. Archives). For the documents regarding Matthews's beliefs he cites Mass. Archives, 10:31, 75, 77, 78, 80 and 241:183, 184. See also Marmaduke Matthews, "Matthewes' Defence," *Collections of the Massachusetts Historical Society*, 3d ser., 1 (1825; reprint, 1846): 29-32. David D. Hall writes that spiritists "subordinated objective marks and formal signs of grace to the inner witness of the Spirit," *The Faithful Shepherd: A History of the New England Ministry in the Seventeenth Century* (Chapel Hill: University of North Carolina Press, 1972), 8.

¹⁷Gura, *Puritan Radicalism*, 84.

"the foundation of a dogmatical and historical, but not a saving faith."¹⁸ Ministers like Thomas Shepard of Cambridge and Peter Bulkley of Concord were horrified by such beliefs and worried that they would put too much power in the hands of the people.¹⁹ Matthews was willing to discuss his beliefs with magistrates and ministers but his occasionally meek language hid the same firmness of purpose that he later displayed when he refused to swear to the Act of Conformity in Wales in 1660.²⁰

As they depicted their views in statements to the General Court, Malden's prominent church members were less concerned with dogma than with their desire to have a minister and their right to call their own without interference from outside their congregation. They argued that they had been in great need of a minister, that they agreed that any errors in doctrine he espoused should be corrected, and that they truly valued the advice of churches and magistrates. They explained that they chose not to take the advice of the Charlestown and Roxbury churches that they not ordain Matthews because they received little information from those churches when they requested that any of Matthews's sins be pointed out to them. The Malden church

¹⁸"Matthewes' Defence," 31.

¹⁹Gura, *Puritan Radicalism*, 82.

²⁰Corey, *Malden*, 158.

members believed that while important, advice from other churches should not be binding. When they made their decision to call Matthews, "considering the liberty of the churches allowed by law to choose their own officers and apprehending him (Mr. Matthews) to be both pious, able and orthodox, as the law provides, we proceeded."²¹

Yet the members may also have had more radical beliefs. Of the three men made responsible for the church's fine, two were tainted, or would be in the future, with heretical views. Edward Carrington had supported the Antinomian cause, signing the March 1637 petition in support of John Wheelwright and later acknowledging his error before the General Court to avoid punishment.²² Like Matthews, Joseph Hills arrived too late to take a position in the Antinomian controversy, but he had baptist leanings. Though he was never prosecuted before the county court, he was presented by the grand jury in 1659 for not having his child baptized.²³

²¹Mass. Archives, 10:31, in Corey, *Malden*, 149.

²²Emery Battis, *Saints and Sectaries: Anne Hutchinson and the Antinomian Controversy in the Massachusetts Bay Colony* (Chapel Hill: University of North Carolina Press, 1962), 312.

²³See December 3, 1659 jury summons, Middlesex County Court folio files, Massachusetts State Archives, Boston, file 23 (hereafter cited as file 23). The grand jury presentment does not survive but the summons of Hills was included with summonses regarding a pound, stocks, and a bridge, common subjects of grand jury presentments, and the witness listed was John Sprague who was the Malden grand juror that year, David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 4 vols., Massachusetts State Archives, Boston, 1:171 (hereafter cited as Pulsifer). (Witnesses on grand jury presentments tended to be the grand juror from the town.)

He also acted as an executor for his kinsman Henry Dunster who left the presidency of Harvard College because of his espousal of Anabaptism.²⁴ The third man was Hills's son-in-law John Waite.

Perhaps there would have been little difficulty if Joseph Hills and the other Matthews supporters had acknowledged their fault, but they did not. Church and preacher fought to stay together, each facing the court separately for their various misbehaviors. The trouble for Matthews began soon after his ordination. His beliefs, as revealed in his sermons, brought opposition from two Malden church members who presented him to the General Court. In June of 1650 he was given a week "to give satisfaction for what he formerly delivered, as erronious, weake, etc, to the elders of Boston, Charles Toune, Roxbury, and Dorchester, wth such of the Magists as shall please to be their present."²⁵ Although he did not give satisfaction, almost a year passed before the court summoned him again, this time to answer a bill "wch concernes former and latter miscarriages of his."

²⁴Pulsifer, 1:183. Stephen Foster argues that later arrivals were more radical, "English Puritanism and the Progress of New England Institutions, 1630-1660," in David D. Hall, John M. Murrin, and Thad W. Tate, *Saints and Revolutionaries: Essays in Early American History* (New York: W.W. Norton, 1984), 6. Hills and Dunster arrived in 1638 and 1640 respectively, Corey, Malden, 166; Jeremiah Chaplin, *Life of Henry Dunster: First President of Harvard College* (Boston, 1872), 31.

²⁵Mass. Records, 4 (pt. 1):21.

A committee of magistrates and deputies was to consider the "unsafe, if not unsound, expressions" that were discovered in his sermons, the church of Malden was to appear at the next court to answer for ordaining him against advice, and Matthews was to acknowledge his sin in allowing himself to be ordained or to pay a fine of ten pounds. Matthews wrote an extensive response that did not satisfy the court and was fined.²⁶ A minority of fifteen deputies dissented from the judgement.²⁷

In October 1651 the court, while defending its authority over the issue, ordered the Malden church to "consider the errors Mr. Mathewes stands charged with in Courte." If "uppon the churches dealing with him, he doth acknowledge his errors and unsafe expressions, and give sattisfaction under his hand" to the court's secretary within six weeks, they would let the matter rest. Otherwise there would be a council of churches called to advise the Malden church.²⁸ The council met and reported to the court in May of 1652 of their dealings with Matthews "and the successe thereof."

²⁶*Mass. Records*, 4 (pt. 1):42-43; Frothingham, *Charlestown*, 123. Five men confirmed the truth of his explanation of what he had preached. Deposition of Edward Carrington, John Upham, John Wayte, Thomas Squire, and Abraham Hill, May 16, 1651, *Mass. Archives*, 10:78, in Corey, *Malden*, 138-9.

²⁷*Mass. Records*, 4 (pt. 1):71. The court had difficulty getting the fine: in October 1651 it ordered that "the execution thereof shall be respited till other goods appeare besides bookes."

²⁸*Mass. Records*, 4 (pt. 1):71. The churches involved were to be Cambridge, Charlestown, Reading, and Lynn.

Matthews's confession, though still not quite what the court wanted, was accepted.²⁹

The Malden church was called before the same court as Matthews on October 24, 1651. Several men, including Edward Carrington, Joseph Hills, and John Waite, appeared on the church's behalf to answer for it in having ordained Matthews. In a written answer that they delivered to the court they argued that Matthews's errors had not appeared until after his ordination, that he had been punished for his errors in Hull and "stood clear in law," that they valued criticism from other churches but were never given the churches' reasons for their opposition of Matthews's ordination, and that churches and magistrates had the right to advise churches, but that churches ultimately had the right to choose their own officers "provided they be pious able & orthodox."³⁰

The people of Malden's church added two more documents to their effort to soften the General Court. Thirty-six Malden and Mystic Side women signed an October 28 petition begging the court to allow Matthews to continue to preach to them. They told of the "many prayers, Indeavors & long wayting" that had brought the minister among them. They noted that through his "pious life & labors the lord hath Afforded us Many Saving Convictions directions and

²⁹Mass. Records, 4 (pt. 1):90.

³⁰Mass. Archives, 10:31, in Corey, *Malden*, 148-150.

Table 4.1

Alphabetized Names of Women Who Signed Petition in Support of
Marmaduke Matthews, October 28, 1651

Eliz. Addams
 Rachel Attwood
 Han. Barret
 An: Bibble
 Wid: Blancher
 Sarah Bucknam
 Joanna Call
 Eliz. Carrington
 Joan Chadwick
 Fran. Cooke
 Bridget Dexter
 Eliz. Green
 Eliz. Green
 Eliz. Green
 Margrt Green
 Lyda Greenland
 Eliz. Grover
 An Hett
 Rebec: Hills
 Sarah Hills
 Eliz. Knoher [Knower]
 Jane Learned
 Helen Luddington
 Eliz. Mirrable [or Marble]
 Sarah Osburn
 Margrt Pemrton
 Mary Pratt
 Mary Rust
 Mrs. Sergeant
 Thankslord Shepprd
 Joan Sprague
 Bridget Squire
 Mary Wayte
 Margt Welding
 Han. Whittamore
 Susan Wilkinson

Source: Deloraine Pendre Corey, *The History of Malden, Massachusetts, 1633-1785* (Malden, 1899), 146.

Consolations" and "if it were ye good pleasur of god wee much desyr, And it is our humble Request to this Honord Court" that they overlook his "personall & perticulr Faylings." The petition ended with the request of the women in their own names, "with Many others," that he be allowed to continue to employ his God-given talents.³¹

Joseph Hills addressed the court in one last document on October 31. Knowing "that the answr of the Church of Malden . . . is not satisfactory" (which he would have learned as a deputy attending the court), he asked the court to consider the many efforts the church had made to procure a minister. He provided a list of nine men whom the church had invited to become their minister. In explanation of the church's desperation to have a minister, he stated that church members had been denied the ordinance of baptism at a neighboring church. He also argued that had the church known that the opinions of the Roxbury and Charlestown churches had been intended as more than advice, they would not have proceeded with the ordination.³²

The women's appeal and Hills's humility were too late. The court fined the church fifty pounds to be levied on the estates of Hills, Carrington, and Waite and collected by them from other members who had consented to Matthews's ordination and not given the court satisfaction. Nine deputies (of

³¹Mass. Archives, 10:79, in Corey, *Malden*, 146.

³²Mass. Archives, 10:31, in Corey, *Malden*, 150-51.

about forty) and Richard Bellingham (of ten magistrates) dissented from this order.³³

The petition of Malden women seems to have made little impact at the time, but is an important artifact. The court did not answer it, instead writing that "the magistrates conceive the answer to this petition will be the result of the Magistrates & deputies agreement of Mr Mathewes censure."³⁴ Women occasionally petitioned the General Court in this era: in 1649 and 1650 the women of Boston and Dorchester petitioned for the release of their favored midwife Alice Tilly.³⁵ The women's special concern that the midwife be allowed to practice seems to explain their activity in that case. While no evidence, other than the petition itself, survives to explain the Malden women's motivation, one religious reason and one civil reason may allow us to understand their action. The "many Saving Convictions" that Matthews had labored for were critically important to these

³³Corey, *Malden*, 151. Numbers of deputies and assistants is from the list given at the May court, *Mass. Records*, 4 (pt. 1):36-7.

³⁴Mass. Archives, 10:79, in Corey, *Malden*, 146.

³⁵Mass. Archives, 9:6-14. See Ann Giardina Hess, "Community Case Studies of Midwives from England and New England, c. 1650-1720" (Ph.D. diss., Cambridge University, 1994), 315-16; Norton, *Founding Mothers and Fathers*, 203-6 and "'The Ablest Midwife That Wee Knowe in the Land': Mistress Alice Tilly and the Women of Boston and Dorchester, 1649-1650," *William and Mary Quarterly* 55 (1998): 105-134, which includes the documents. Two hundred and seventeen women signed one or more petitions for Tilly. Of them, one or two signed the Malden petition as well, Jane Learned and an Elizabeth Green (see table 4.1).

church members. The women of Malden had as great an interest in a ministry to their souls as the men, while their decreased mobility, which tied them more closely to their home community, argued for an even greater concern with the presence of a minister.³⁶

The timing of the petition suggests an additional explanation for it. It came four days after the Malden church appeared before the court and three days before Hills's letter which noted that the court was inclined to decide against the church. Malden's leaders must have been trying to do everything they could to influence the court, but the risks of continuing to oppose it were becoming apparent. Since only the women signed a petition purporting to be from the inhabitants of the town, the men--their husbands, fathers, sons, and brothers--were left with the possibility of denying responsibility. At the least they were not providing the court with an easy list (as the Antinomians had done) of the men to punish or quell.³⁷ If this was their intent, the people of Malden followed a tradition that took advantage of the ambiguities of women's *femme covert* status in making them both responsible and not responsible for their own actions.³⁸ Punishing women, who did

³⁶For mobility see Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1982), 140-41, 144.

³⁷Battis, *Saints and Sectaries*, 150-51.

³⁸Ulrich, *Good Wives*, 192-93; Norton, *Founding Mothers and*

not own property if they were wives, would be more difficult (though certainly not impossible). A fine would be perceived to fall on the husband whether justified or not. However, the General Court avoided the problem entirely by putting the responsibility for paying and distributing the fine on three of the men who had made themselves known, each of whom had a wife or daughter who had signed the petition. The court's refusal to answer the women's petition in any other way was a tacit rejection of the women's involvement in the situation.³⁹

Once it accepted Matthews's confession in May of 1652 the issue was closed for the General Court. But the matter of the church's fine dragged on in that court and the county court until 1662.⁴⁰ In October of 1652 Matthews's fine was remitted and the church's fine was reduced by ten pounds. Matthews stayed in Malden until 1654 but because no church records survive we do not know if he was acting as minister or why he left. He may have gone from there to preach at Lynn but returned to England in 1655 with several members of the Malden church.⁴¹

Fathers, 86-87.

³⁹See Mary Maples Dunn for more on women's involvement in Puritan churches and its reduction over time, as well as their involvement in more radical sects, "Saints and Sisters: Congregational and Quaker Women in the Early Colonial Period," in *Women in American Religion*, ed. Janet Wilson James (Philadelphia: University of Pennsylvania Press, 1980), 27-46.

⁴⁰Frothingham, *Charlestown*, 129; Pulsifer, 1:212.

⁴¹Corey, *Malden*, 157-8. See Carrington's 1660 petition, file 24.

The position of Joseph Hills, Malden's leading citizen, is critical to considering the consequences of Malden's encounter with the General Court and any disruption to authority in Malden. The Matthews dispute resulted in disruption of both formal and informal roles and control in the town. During the struggle, Hills lost one of his formal roles. He served only once as a justice on the county court; though appointed in April 1651 to serve for the following year, he did not. But his service as a deputy was not disrupted by the conflict. He served in 1647 (when he was also speaker of the deputies) and 1650 through 1656.⁴² While no selection of commissioners to end small causes for Malden appears in the county court record until 1657, Hills seems to have acted in this capacity.⁴³ A further disruption in his public service occurred in 1656 and 1657, after Marmaduke Matthews was gone, though not forgotten.

In April of 1656, Hills was presented before the county court for self-marriage. He had officiated at his own marriage to his third wife, Helen Atkinson, in January of 1656. Ironically the court cited a page from the law book

⁴²James Savage, *A Genealogical Dictionary of the First Settlers of New England*, 4 vols. (1860-62; reprint, Baltimore: Genealogical Publishing Company, 1965), 2:418. He probably did not serve in 1648 and 1649 because he was working toward the founding of Malden. He was no longer really an inhabitant of Charlestown but Malden had not yet been founded and could not send a deputy to the court.

⁴³See the Dexter and Rose case and Hills's self-marriage below.

that Hills had helped compile as the source of the law he had broken. He admitted his fault to the court regarding "his misunderstanding the grounds where in he went wch he now confeseth to be unwarrantable." Michael Wigglesworth wrote in his diary that "Mr. Hills marrying of himself which I understood to be very ridiculous in the opinion of the country where it was noised." But Hills was in good company, because Richard Bellingham, magistrate and frequent governor, had also committed self-marriage fifteen years before. Bellingham worked on the *Laws and Liberties* with Hills and dissented from the decision against the Malden church as well.⁴⁴

The second incident took place in 1657 when Hills's views on baptism prevented him from being ordained again as church elder. In 1656, after a great deal of indecision, Michael Wigglesworth accepted the call of the Malden church, which had been without a minister for at least two years. In May, Wigglesworth wrote in his diary that there were various issues that concerned him in regard to his settlement at Malden: the first was Hills's self-marriage and the fifth was Hills's view on baptism. Wigglesworth found Hills "staggering or unsound" and "held it unsafe to let his

⁴⁴Pulsifer, 1:95; Wyman, *Charlestown Genealogies*, 503; *The Diary of Michael Wigglesworth, 1653-1657: The Conscience of a Puritan*, ed. Edmund S. Morgan (1946; reprint, Gloucester, Mass.: Peter Smith, 1970), 99; Savage, *Genealogical Dictionary*, 1:161; John Winthrop, *The History of New England from 1630 to 1649*, ed. James Savage (1825; reprint, New York: Arno Press, 1972), 2:43.

ordination" as elder proceed. So the minister "used means to bring out his opinion and prevent" Hills's ordination.⁴⁵

Although the town seems to have continued to support Hills and elected him as a commissioner to end small causes in 1657, the county court did not grant the town's request and made another man commissioner (an uncommon occurrence).⁴⁶

Hills did not sit on the General Court for three years; from 1657-1659 Malden sent no deputy. In 1660 Hills went again. Either the marriage, or the revelation of his questionable views on baptism, or a combination of the two, caused the General Court to reject Hills as an authority figure. At least for a period of time.

Hills's association with Henry Dunster may also have indicated his baptist leanings. Dunster had been president of Harvard College from 1640 to 1654; a church member and minister, he was one of Middlesex's leading lights. In 1640 he advocated infant baptism but admitted in his relation to the church of his conversion that he preferred baptism by immersion. Nevertheless he stated that he would not be offended by sprinkling. In 1653 Dunster refused to allow his infant to be baptized and began a chain of events that led to his resignation from the college and eventual removal to Scituate in Plymouth Colony.⁴⁷ Hills's 1656 marriage to

⁴⁵Wigglesworth, *Diary*, 99.

⁴⁶Pulsifer, 1:140, October 1657.

⁴⁷Chaplin, *Dunster*, 55, 109, 204.

Dunster's sister or sister-in-law Helen Atkinson, who was mentioned in Dunster's 1659 will, and his appointment as one of the executors of that will indicate that Hills had a personal relationship with Dunster and may have shared his opinion about baptism.⁴⁸ Unlike Dunster, Hills does not seem to have flaunted his heretical opinions by visiting known anti-paedobaptists like Thomas Gould of Charlestown, but his views became known, perhaps through Wigglesworth's "means."⁴⁹ In December of 1659 the grand jury presented Hills for not bringing his child to be baptized. However, though the recorder summoned Hills, the case did not come before the county court and the next December he returned to the court as a deputy. It seems likely that he had his child baptized.⁵⁰

We turn finally to the effects these disputes had on the everyday functioning of the Malden community. The result of the disagreement over Marmaduke Matthews was that many of Malden's authority figures came under a cloud. The censure of minister and elders, as well as deputy and respected citizens, seems to have undermined their ability to keep the community in order.⁵¹ Many of Malden's ordinary people had

⁴⁸Corey makes this assumption, *Malden*, 220. The will is in Chaplin, *Dunster*, 305-8.

⁴⁹Chaplin, *Dunster*, 200.

⁵⁰This was his last known child, Abigail. Corey, *Malden*, 219, file 23.

⁵¹Edward Carrington was a grand jurymen in 1653, Pulsifer 1:34, 47.

been undermined too. Church members, including the women who signed the petition and their male relatives who were also members, had been severely rebuked by the General Court. This situation, as well as possible continuing rifts over the direction of the church, seems to have weakened the workings of informal authority in the community. Members of the Malden community who ordinarily respected authority appeared in court questioning that authority. In rebuking the community leaders and the Malden church, the General Court had made the Malden community vulnerable to challenges of this kind.

The October 1652 case of Robert Burden and Sarah Bucknam revealed the fissures in Malden. The people in their neighborhood disagreed about whether Sarah and Robert were guilty of "imodest and suspitious cariages in theire familiarity together." It is clear from the records, however, that if the more prominent citizens in the neighborhood had been allowed to determine the outcome, or if the consensus among householders and their wives had been followed, they would not have been admonished and bound over by the county court. But for the magistrates who heard the case, even an appearance of impropriety in Malden must have been enough to merit a conviction and a bond for good behavior.⁵²

⁵²Pulsifer, 1:31-32, 37; file 7. Some testimonies do not survive but are mentioned in Sarah Bucknam's answer to the charges.

No one disputed that Sarah Bucknam and her husband William exchanged various services with Robert Burden, an unmarried neighbor who had boarded with them for a while. Burden plowed William's fields and carted hay for him, while Sarah "baked and washed for him and told" Alice Larkin "that shee could have Robt Burden to mend her shooes for her when shee would." What offended some neighbors, and what other neighbors denied, was the great familiarity between Sarah and Robert. Larkin reported that "it was in the mouth of many that she was very familiar wth Sd Robte Burden wch was observed by ye neighbors." Suspicions were magnified because "he was readdy to doe any thing for her & shee was as readdy to doe any thing for him." Finally, "they were observed to[o] oft together whereby it was thought that there was too much familiarty betwixt them."⁵³ Jonathan and Elizabeth Webb, who lived with Burden when he established his own household, testified that he would spend the night at the Bucknam's when William was away (summoned by one of the teen-aged Bucknam children). Other witnesses accused Sarah and Robert of meeting together in isolated areas.

Sarah performed various housewifely tasks for Robert. The Webbs complained that while they lived with Burden he was unwilling to accept Elizabeth Webb's housekeeping work,

⁵³Testimony of Alice Larkin, file 7. Sarah also roused suspicion when she "would sometymes take a girl of hers & say looke here is a short neckt girle is she not like Robte Burden."

preferring Sarah's. Jonathan Webb testified that "the said Robte oft carryed his best victualls to be made readdy at Sarah Bucknams house" a quarter mile away. The affronted Jonathan did not know "any cause why his wyfe being in the house and willing should not dresse the said Robts dyett." And though "it was agreed betweene the said Robte Burden and this deppnt that his wyfe should wash for the said Robt," after two or three months "the said Robt would not provide soape at hoame." Instead, "Bucknams wyfe sent her sonn to desire" Bucknam "to help her to water and wood to wash for him (as the youth said) and Robt went accordingly." Perhaps the implied slights on her housework prompted Elizabeth to speak to Sarah, which she reported to the court she had done, about the great familiarity she noticed between Sarah and Robert.

Sarah's written answer to the charges against her, which refuted the accusations point by point, was convincing, and she had Joseph Hills and other prominent citizens on her side. The ruling elder from her old church wrote that "in all my observation off her I did observe her to carry her selfe modestly and discreetly."⁵⁴ Edward Carrington testified that in seven years of living near her he "did never observe in the least measure any imodest carriage either towards Robt Burding or any other." Having spent much time with Sarah and

⁵⁴Statement of John Green, file 16; Wyman, *Charlestown Genealogies*, 435.

Robert at her house and his own he "never did see any more familyarietie then might stand with Christianytie & honestie." He explained that "the reason why Robt Burding did so much frequent the house; after he left boarding theare was because Will Buckman had much occasion of carting and plowing & had neither cattle nor skill of his owne to do it and could seldom gitt others to do it though he often prest myselfe and others."⁵⁵

Another neighbor asserted that though he took particular care to inquire into Robert Burden's behavior because of the rumors he had heard he "could not heare of any one any levity or unbeseeming carriage in him to the saide Saraigh or any others." Instead everyone concurred that he "was a very sober man and very handy and helpfull to all his neighbors that hath occation to make use of him." In regard to Sarah: "I having lived not fare from hir ever since shee was . . . married I never hearde any show of dishonesty to any . . . but that she was a very good houswife and very helpfull to . . . [her] husband in his domisticke affairs." Even the wife of Sarah's chief accuser was reported to have called her a "very honest godly woman." A neighboring woman explained that she deeply esteemed Sarah Bucknam "in regard of honesty & piety." Another testified that "Robt Burden often cominge thither whilest I was there I never saw any unseemly carriage

⁵⁵File 7.

by them."⁵⁶ Given the weak evidence against them and the strong evidence supporting them, the conviction of Sarah Bucknam and Roger Burden calls for an explanation.

The explanation lies in the fact that Malden of the early 1650s was, in many ways, a town turned upside down. The disagreement over Matthews had exposed the town's leaders and church members to the discipline of the General Court and weakened their authority in regulating behavior in their town. This disruption extended into the female arena of sexuality and made Sarah Bucknam, who had probably thought herself respected enough not to worry about the appearance of familiarity in her innocent relationship with Burden, vulnerable.

The Bucknam-Burden case does not break down cleanly between those who signed (or whose wives signed) the petition in support of Rev. Matthews and those who did not. There were some on either side of the issue. However, nine out of eleven Malden residents who testified in Sarah's favor had either signed the petition or had a wife or daughter who had, as had Sarah herself.⁵⁷ Of the twelve people from Malden who testified against her or who were mentioned as questioning

⁵⁶Testimony of William Brackenbury, Elizabeth Carrington, and Hannah Whittemore, file 7.

⁵⁷Of those who testified on her behalf, Elizabeth Mirrable, Frances Cooke, Lydia Greenland, Elizabeth Carrington, and Hannah Whittemore were signers; Edward Carrington, Thomas Whittemore, and William Mirrable were signers' husbands; and Joseph Hills was a signer's father.

her behavior, six had not signed and six had either signed or were related to someone who had (this includes three daughters of two signers).⁵⁸ Leading Sarah's accusers was her old friend Hannah Barrett's husband James. Sarah depicted James as the promoter of all her problems.⁵⁹ Hannah Barrett had signed the petition and though no testimony of hers survives, another witness "seeinge the deepe discord between them" had pressed Barrett "to lay aside all these contentions and dissensions & to lyve in peece & love as they had done."⁶⁰ Goodwife Bridget Dexter was a signer of the petition and was one of the people who questioned Sarah's behavior. But according to Sarah's statement she also provided testimony clearing Sarah of one of the complaints made against her: traveling alone with Robert Burden in a boat from Boston.

The twelve people who either testified against Burden and Bucknam or were said to have questioned their behavior were an unusual group of witnesses. With a few exceptions, they were the members of the community who were normally seen and not heard: young women, non-church members, and transient

⁵⁸Of those who testified against her or were reported to have questioned her behavior, Bridget Dexter was a signer; James Pemberton, and James Barrett were signers' husbands; Alice (Dexter) Muzzy, Elizabeth Dexter, and Marie Pemberton were signers' daughters. Margaret Call Green might be signer Joanna Call's daughter but is not included in this count. (Wyman does not list her as Joanna's child, *Charlestown Genealogies*, 166).

⁵⁹Edward Carrington also noted that the rumors began after Sarah and "neighbor Barrat fell out," file 7.

⁶⁰Testimony of Elizabeth Carrington, file 7.

or marginal inhabitants. The witnesses included four young women who claimed to have seen the defendants trysting in some sumac (a defense witness rebutted their testimony) and another young woman who went to stay with the Bucknams. Other witnesses, like Alice Larkin, did not live long in Malden. The Webbs do not seem to have owned their own house before Jonathan's death in 1658.⁶¹ Led by the Barretts, who did have a moderate community standing, these people gained an unusual prominence in the court and were able to help convict a woman who would normally have kept watch on them.⁶² It may be significant that, as we will see below, Sarah's husband William began a career of harassment of women at about this time that included some of the women who testified against Sarah.

While the court might be said to have failed to support traditional leaders in the Bucknam-Burden case, it came down strongly on the side of Joseph Hills a little over a year later in 1654, when Thomas Squire defamed him. Squire, a town founder, former selectman, and supporter of Marmaduke Matthews, began to act in a bizarre fashion soon after the Bucknam case. In the meeting house on several Sabbaths he accused Hills of "pleading bawdie buissines in the Court" in

⁶¹Savage lists Larkin as being of Boston, *Genealogical Dictionary*, 3:56, 4:445.

⁶²In keeping with her normal role Sarah reprimanded Margaret Call for discussing something with Call's husband that he then repeated to other men, answer of Sarah Bucknam, file 7.

support of Sarah Bucknam and counseling Squire's wife "to vex & cross him all that shee could." Making his charges in "many reproachful, rayling and reviling speeches," Squire argued that Hill "was not fit to be A ruling elder." Squire claimed that in addition to encouraging his wife to steal from him and rail against him, he suspected Hills and his wife had committed adultery.⁶³ The charges, and the manner in which Squire made them, indicate the way order had been disrupted in the Malden community and in the church at the center of it. Hills had been unable to prevent Squire from repeating the charges on several Sundays. Instead of resolving their problem within the church as church members should have done, Hills was forced to go to the county court. While Squire's accusations and his subsequent conduct in driving his wife from his house may indicate mental illness, they also indicate the damage to the functioning of Malden's community.⁶⁴

The county court worked to repair Malden's hierarchy by fining Squire ten pounds, half of which would be remitted if he acknowledged his offense in church. But the disruption of order had been extensive, as could be seen in Squire's own

⁶³Corey, *Malden*, 138-39. Testimony of John Upham, Thomas Skinner, Nathaniel Upham, Thomas Blanchard and Thomas Call, file 8.

⁶⁴In addition to his attacks on Hill and Bridget Squire, Squire brought apparently worthless stones into his house, then accused his wife of stealing one, which he said was worth more than £40, petition of Bridget Squire, file 8.

household. Bridget Squire lost both her livelihood and the respect to which she was entitled when her husband turned on her. Like the court, the church had disciplined him, but this just increased his abuse of his wife. Bridget complained bitterly that while Thomas reviled her, telling her she would go to hell, the Squires' servant John Hall "sate in the House & heard it & laught & I reprov'd him for laughing at wickedness." This certainly was a world turned upside down by Puritan standards, when the servant was allowed to laugh with impunity at his mistress. After her husband cast her off "renouncing me for his wife," she petitioned the county court for a share of the estate so that she could avoid being a charge on the town and church. She asserted: "I have spent my strength for theise twenty years wth my husband both in getting & saving his Estate" and requested "a Competency out of that in which According to God I have a Right."⁶⁵

The disruption of the authority structure in Malden was apparent a little later in 1654 when two dependent young people, Elizabeth Dexter (daughter of Bridget) and John Rose, accused Job Lane of slandering them by saying that they were foresworn and had taken a false oath.⁶⁶ The case grew out of

⁶⁵Pulsifer, 1:46-47, file 8. No record survives of the response to Bridget Squire's petition.

⁶⁶Bridget Dexter was a petition signer and witness both for and against Sarah Bucknam. John Rose was a servant or dependent of some sort. A John Ross married in Boston in 1659 and was a soldier for Malden in 1675, Savage, *Genealogical Dictionary*, 3:577. A daughter was born in

a neighborhood feud between the Dexters and the Pembertons over boundary issues. In March of 1654 Joseph Hills, William Sergeant, and two men from outside the town worked out an arbitration agreement between the Pembertons and Dexters.⁶⁷ Elizabeth Dexter and John Rose testified before Hills and Sergeant that they had seen James Pemberton strike Bridget Dexter. Lane was one of three witnesses who testified that Pemberton had not assaulted Dexter. It is not clear whether this testimony was given before the arbiters or before Hills and Sergeant at a local court. Whichever it was, the decision went against the Dexters. Pemberton was not punished for the incident.

Refusing to let the decision stand, Elizabeth Dexter and Rose seized on the comment of Job Lane that their own testimony had been false, and brought the slander case against him to the county court. Hills and Sergeant testified to the court that the evidence had been overwhelming that the attack had not occurred. They believed that Dexter and Rose brought the slander case from spite.

Malden the same year, Wyman, *Charlestown Genealogies*, 823. Job Lane was thirty years old and had been a petty juror in 1653. He became a freeman in 1656 and his first wife died in 1659, Pulsifer, 1:35, Wyman, *Charlestown Genealogies*, 597, Savage, *Genealogical Dictionary*, 3:52. Richard and Nathaniel Barnard, witnesses for the plaintiffs, were young men of Boston who also married in 1659 so were dependents of some kind in 1654, Savage, *Genealogical Dictionary*, 1:119, 120. Pulsifer, 1:57, file 9.

⁶⁷The other two men were Thomas Marshall and Robert Keayne, file 9.

This was certainly true, but nevertheless it was an unusual situation, with two young people of marginal status challenging, in essence, the decision of town leaders. Truth was a defense against slander so Dexter and Rose's case could only be proved if Hills and Sergeant's decision was found false.

Though both Pembertons and Dexters had testified against Sarah Bucknam and Robert Burden and signed the women's petition, the families had become implacable enemies. As this dispute shows, Malden was not divided into clear-cut factions, rather the disruptions it underwent in the 1650s were the result of a more general breakdown of the authority structures of the town. While feuds between families occurred throughout the county, this case stands out because of the barefaced challenge of town leaders, and seems to have resulted from the particular vulnerability of town leaders that arose from the dispute with the General Court. However, the county court moved to support Malden's authority figures and awarded Job Lane costs.

Malden's conflict with the General Court even extended to the choice of an ordinary keeper. A tug of war took place between the town inhabitants, who made their requests that Thomas Skinner act as the ordinary keeper to the county court, and the General Court, which licensed John Hawthorne despite the town's opposition. The contest between the ordinary keepers had already begun when the Malden church was called to court about the Matthews issue. In March 1651 the

inhabitants of Malden sent a request that Thomas Skinner be allowed to keep an ordinary to the county court. We can assume their request was granted because on April 1 the court ordered, at the request of the selectmen, that John Hawthorne desist from keeping an ordinary.⁶⁸ With the May presentment of Matthews and his church, Hawthorne's fortunes changed. A week after he swore to several offensive passages in Matthews's sermons, the General Court judged "it meet to encourage and appointe him . . . to goe on and keepe the ordinary at Malden."⁶⁹ Local interests fought back in October with the grand jury presentment of Hawthorne for allowing drunkenness.⁷⁰ In May of 1652 the General Court granted the petition of the inhabitants of Malden and allowed Skinner to keep the ordinary in Hawthorne's place. They also granted Hawthorne's petition for the remission of a half year's rent for the drawing of wine.

In the long run, the town had its way over who would keep its ordinary. It seems that in a contest that involved such a local issue, the town inhabitants had the advantage. Perhaps, as the town's historian assumes, the locals gave Hawthorne little business and he was unable to continue.⁷¹ Though ordinaries at this time catered more to travelers than

⁶⁸File 1; Pulsifer, 1:48; file 6.

⁶⁹*Mass. Records*, 4 (pt. 1):42, 46; Corey, *Malden*, 138.

⁷⁰File 4.

⁷¹Corey, *Malden*, 115, 152.

inhabitants, they were sites of official meetings. The commissioners to end small causes and the selectmen may have refused to meet in Hawthorne's house. The grand jury presentment for allowing drunkenness indicates another weapon local leaders were able to wield. The county court, where Richard Bellingham (who would oppose the judgement on the church in October) sat as a justice, proved more sympathetic to local sentiment than the General Court.

John Hawthorne found to his detriment that in the long run, the goodwill of Malden inhabitants was more important than the favor of the General Court. His testimony against Marmaduke Matthews and the rest of the Malden church had left him open to the reprisal of the Malden community. Of the two church members who testified to the General Court, Thomas Lynde was an established member of the community but John Hawthorne was not. His recent arrival may have left him vulnerable. He had lived in Salem, moved to Malden, and his subsequent removal to Lynn demonstrated the dangers of opposing the majority of one's neighbors. Thomas Lynde escaped more lightly. Though censored by the church, he quickly reestablished himself and held respected positions in the town and church for many years.⁷²

Joseph Hills endured another difficult situation in 1660 when his son Gershom was ordered to appear at the county court "to answer for absenting self from public ordinances

⁷²Corey, *Malden*, 115, 152.

and disobedience to parents and wasting their estate." The warrant named his father as one witness and Thomas Lynde as the other. We do not know if Hills initiated the action, with brotherly help from Deacon Lynde, or whether he was included in the warrant to help him save face when Thomas Lynde brought the issue to the court. The case does not appear in the court order book so it may have been resolved before the court met. Perhaps Gershom was scared into obedience by the threat of court action.⁷³

Malden did not completely overcome its rocky beginning for decades. If Michael Wigglesworth is to be believed, its inhabitants continued to live in strife for many years.⁷⁴ The difficult climate in Malden may explain how William Bucknam got away with numerous sexual assaults on Malden women for over a decade. Fourteen women testified against him in 1662. In a long campaign of harassment he had assaulted women in their homes, chasing them from room to room, on a boat, in a mill, and on horseback. He exploited any advantage he had without shame. When, as constable, he went from house to house recording the value of property, he assaulted at least

⁷³File 22, December 1, 1660 summons for jurors. In 1674 Joseph Hills and his son-in-law John Wayte requested that the county court appoint Thomas Lynde and another man to take care of Gershom's estate and family "by reason of a lunatic distemper in his body," Pulsifer 3:109.

⁷⁴"Mr. Wigglesworth's Letter to the Church at Malden June 19 1658," *Massachusetts Historical Society Proceedings* 12 (1871-73): 93-98. The letter was addressed to Hills at his house, showing his continued prominence in the church. See also Corey, *Malden*, 218-19.

two women, telling one "I come to see how rich" her husband was.⁷⁵ On another occasion, the miller's wife was unwilling to go with him into the mill to measure out some flour because she had already had difficulties with him. Bucknam went and talked to her husband working nearby who sent his wife the message that she was to go with Bucknam, who then assaulted her in the mill.⁷⁶

One of the reasons Bucknam got away with his behavior for so long was that at first he assaulted marginal or young women like Elizabeth Webb, who had kept house for Robert Burden (she and her husband did not have their own household) and Mary Tufts, later at odds with the town over her and her husband's treatment of their servant. Bucknam's response to the charges makes it seem likely that he still thought he was immune from punishment. In a legalistic document he challenged the validity of the evidence because there was only one witness to each episode, insisted that the witnesses provide the day and year of each assault, and charged that the evidence had been searched out due to prejudice. Sarah Bucknam also sent a statement to the court requesting them to consider the unfitness of one witness, whom she blamed for being the instigator of the case. Sarah explained that she had seen Elizabeth Paine trying to flirt with William and had

⁷⁵Testimony of Hannah Hills, file 31. She was Joseph Hills's daughter-in-law, Wyman, *Charlestown Genealogies*, 503.

⁷⁶Testimony of Rebecca Green, file 31.

admonished her for her uncomely behavior. She also explained to the court that she had never seen her husband acting improperly and that he was admirable in his actions in his family. Poor Sarah must have been horrified at the volume of evidence that accumulated between Paine's original September testimony and the December court date.

For about two years before the case came to court Bucknam, who was probably in his early fifties, had been much less careful in his choice of victims.⁷⁷ He attacked young women and older women, marginal women and self-confident church members. When he attacked Margaret Pemberton, a matron in her fifties, in 1661, he must have feared he had gone too far: before she had the opportunity to reprove him for his behavior he returned to her and "showed sum sorrow & promised amendmt." As a result she "forbore speaking of it to Authority." Other women may have thought that Bucknam, a constable and sometime juryman, would be believed over them. Elizabeth Webb explained that she "forbor declaring of it because I had no witnes."⁷⁸ At least two of the women told their husbands, but this did not check Bucknam's activities.⁷⁹

⁷⁷He married Sarah, who was born around 1622, sometime in the early 1640s and she was his second wife. Wyman, *Charlestown Genealogies*, 147.

⁷⁸File 31. Webb's testimony against Sarah may have reflected her anger at William. If she was powerless to accuse him, she had the power to make things difficult for Sarah due to the unusual situation surrounding the Bucknam-Burden case.

⁷⁹Mary Tufts and Rebecca Green (the miller's wife).

Most of the women took a defensive attitude in their testimony, making excuses for their own behavior. The young women were careful to show that they had resisted him sufficiently. Some had fled from him, one sitting outside until he had left her house.⁸⁰ Mary Tufts, who was twenty-four when Bucknam first attacked her, explained that she tried to avoid going on the ferryboat alone with him and that she had told her husband about a later incident.⁸¹ Older women felt the need to explain why they had not reported him, or explained that they had rebuked him at the time. Bridget Dexter told him to go home "ellse I will make him knowen what he wass."⁸² Fifty year old Elizabeth Felt told him: "these courses were not christianlike that they were not the practises of a christian, and that he must labour to mortyfy the lusts of the flesh."⁸³ The different ways women justified their behavior reflects the importance of sexual probity for younger women and of responsibility for policing behavior among older women.

Perhaps William Bucknam's dramatic punishment in county court--he was fined the very large sum of £25--brought a close to this difficult period in Malden. Joseph Hills left

⁸⁰Testimonies of Trial Poor and Hannah Hills, file 31.

⁸¹File 31. Joanna Kennicut explained that she would have gotten away from him sooner if he had not held her horse's bridle, file 31.

⁸²Testimony of Bridget Dexter, file 31.

⁸³File 31.

Malden in 1664 to marry a widow in Newbury, where he served the town as deputy to the General Court and lived to old age. His son-in-law John Waite grew in prominence, becoming deputy, selectman, and commissioner to end small causes. Wigglesworth had a difficult time in the town. It supported him only intermittently and not until the 1680s did he serve it regularly as pastor.⁸⁴ The women who had become unusually visible in the various court cases returned for the most part to decent obscurity.

Massachusetts Bay had little trouble squelching men like Joseph Hills when they assumed too much authority for themselves and challenged Puritan orthodoxy and the control of the colony leaders. However, there was a high price paid when the colony's magistrates were unable to contain the disruptions that contests between elites brought. The people of Malden supported Joseph Hills, and continued to look to him for leadership, as can be seen from the women's petition and his election to church and town offices. But their support meant that challenges to his authority continued to have implications for the authority of everyone in the community.

In the late 1650s Woburn, Massachusetts experienced its own set of tribulations, revealed in several cases that

⁸⁴Richard Crowder, *No Featherbed to Heaven: A Biography of Michael Wigglesworth, 1631-1705* (Michigan: Michigan State University Press, 1962), 226-36.

appeared before the county court. An acrimonious dispute arose among town fathers; the court punished two men for seditious carriages toward government and church authorities; a set of young people appeared to answer for sexual misbehavior; and a young man slandered the county court's magistrates. Surprisingly these cases were connected. They suggest that the eruption of instability could not be confined to the town meeting and military training day by town fathers. The disruption and conflict that occurred among them spilled over into other challenges to authority. As fissures appeared that allowed attacks on colony officials and prevented "town mothers" from being able to control the sexual misbehavior of some of the town's young people, the county court stepped in to enforce order.

Discord appeared in the bitter struggle in 1658 Woburn between town fathers Captain Edward Johnson (author of *Wonder-working Providence*) on one side and Ensign John Carter with selectman Edward Converse and others over the course of a road that had been laid out years before. In December 1658 the case came to the county court because Carter accused Johnson of falsifying the town records to support his own interests. The county court ordered Carter to acknowledge the slander in front of the military training band.⁸⁵ Many

⁸⁵Perhaps this charge was true. In response to disputes in the town in 1667 over division of common land, a committee appointed by the General Court ordered the selection of a new town recorder and limited his term, file 59.

townsmen testified to the original road committee's actions or witnessed the slander. Among them were William Locke and William Simonds, who, the next year in 1659, were heavily fined in county court for their own challenge of authority after they attempted to cast votes for Woburn's deputy to the General Court even though they were not freemen. Locke and Simonds had also been involved in a sexual misbehavior case earlier in 1658. Both men and their female relatives were witnesses to the sexual misbehavior of Ralph Read and his sister-in-law Elizabeth Read.

The appearance of Locke and Simonds in all three cases reveals the connections between the situations, as does the testimony of Elizabeth Read and her husband against Locke and Simonds in their 1659 prosecution and Ralph Read's accusation that Edward Johnson's prejudice was behind his own legal troubles. These three cases reveal a disrupted community where normal methods of conflict resolution were ineffectual. The disputes among town leaders, as well as the disrespect shown to people in authority by other men, reveal the failure of those town leaders to effectively wield their own authority. The situation apparently led to the disruption of the control exercised by neighborhood women. Although neighboring dames had attempted to deal with the sexual misbehavior, their interventions were not enough to contain the disruptions. The resulting court case revealed their roles in trying to control the situation, as well as their ultimate failure in policing their domain.

Woburn, unlike Malden, was a well-established town when trouble broke out there. By 1658 it had been sixteen years since Charlestown Village had been incorporated into the town of Woburn and the church had ordained a minister. In 1640 the General Court had allowed Charlestown, the home of many of the original settlers, two years to settle a remote grant of land.⁸⁶ Thirty-two men signed the town orders, a list of rules for settling the town, in 1640.⁸⁷ Some of these men, never intending to live in Woburn, sold land or gave it to their children, while others became leading town citizens.⁸⁸ Between 1640 and 1642 the site of the village center was moved, bridges and roads were made, and in 1641 the first sermons were preached in the town.⁸⁹ In November of 1642 two men lay-ordained Thomas Carter in the presence of magistrate Increase Nowell and ministers from established towns.⁹⁰

In the early 1650s Woburn inhabitants produced two

⁸⁶W. R. Cutter, "Woburn," in *History of Middlesex County Massachusetts with Biographical Sketches of Many of Its Pioneers and Prominent Men*, ed. D. Hamilton Hurd (Philadelphia, 1890), 343-4; Samuel Sewell, *The History of Woburn, Middlesex County, Massachusetts: From the Grant of Its Territory to Charlestown, in 1640, to the Year 1860* (Boston, 1868), 7-14.

⁸⁷Sewell, *Woburn*, 529.

⁸⁸For more on the roles of original town founders, see John Frederick Martin, *Profits in the Wilderness: Entrepreneurship and the Founding of New England Towns in the Seventeenth Century* (Chapel Hill: University of North Carolina Press, 1991).

⁸⁹Cutter, "Woburn," 347.

⁹⁰Edward Johnson, *WWP*, 178.

notable documents. Captain Edward Johnson's *Wonder-Working Providence of Zion's Savior in New England*, published in England in 1654, described the settlement of New England in heroic terms, beginning with the depictions of persecutions of Puritans in England. In a triumphant voice Johnson described Woburn's prospering church of seventy-four people as one of many in the colony. The other document, which Johnson did not sign, was a collective response to the 1653 law (probably brought about by Malden's actions) that required that before ordination ministers must have the approbation of the elders of four neighboring churches or the county court. Twenty-nine men, one of whom was a founding member of the Woburn church, and twelve of whom had signed the original town orders, signed a petition in opposition to the law.⁹¹ They argued that new towns would have trouble getting fit ministers and should be allowed to use those who occasionally had errors. A number of the signers settled in the nascent town of Chelmsford and may have been concerned about their own ability to find a minister learned and orthodox enough to pass stringent criteria. Others would later become baptists, bringing conflict to Woburn in the early 1670s.⁹² The two documents, along with the town

⁹¹*Collections of the Massachusetts Historical Society*, 3d ser., vol. 1 (1825; reprint, 1846), 38-45. John Mousall was a founding church member, though the signer might have been his son John who had married in 1650, Sewell, *Woburn*, 627.

⁹²Sewell, *Woburn*, 152-57. Religion in Woburn remained a point of contention. In addition to having a great number of baptists in the 1670s, there was contention within the church

records, written by Johnson, reveal a town population engaged in both religious concerns and the town business of laying out and building roads and bridges and the distribution of land.⁹³

In contrast to Malden, Woburn's disruptions have received little attention. While Marmaduke Matthews is a staple in any history of Malden and has at least a footnote in recent treatments of Massachusetts religious history, the troubles that Edward Johnson had with other Woburn founders have been decently buried in obscurity in the county court records.⁹⁴ No town history covers it; nor do Johnson's town records, which are scant for the year 1658, when the accusations and disagreements were probably strongest among town leaders.

The two most visible combatants were Edward Johnson and John Carter. In 1658, Edward Johnson was the leading citizen of Woburn: he was selectman, captain of the militia, deputy to the General Court, commissioner to deal with criminal

that required help from county luminaries to resolve in 1671, file 57.

⁹³Johnson, *WWP*, 180; "Woburn Records, vol. 1, 1640-1694, with an Appendix Containing Records of Lands, 1683-1745," with explanatory notes by Edward F. Johnson, *Woburn Journal* (May 1888-August 1889), collected in "Scrapbook" at the Woburn Public Library.

⁹⁴For examples of Matthews' treatment in religious studies see Hall, *Faithful Shepherd*, 129n and Stephen Foster, *The Long Argument: English Puritanism and the Shaping of New England Culture, 1570-1700*, (Chapel Hill: University of North Carolina Press, 1991), 356n, 358n.

cases and civil concerns like marriage, and town recorder.⁹⁵ One of the founding generation, he was in his late fifties and at the height of his powers. John Carter was about fifteen years younger than Johnson, was the son of one of Massachusetts Bay's original settlers, and had come to the colony as a young man. His land and position in Woburn came in part through his Watertown father's transfer of Woburn land to him and in part through his own role as one of the town founders. In 1658 his years as selectman and captain of the town militia lay ahead of him but he was ensign of the militia, had served on the grand jury in 1656, and was a member of various town committees.⁹⁶

The first conflict between the two men for which evidence survives dealt with the boundary between two lots of land that Carter's father had given to him and to his brother-in-law William Green. Green had died in 1654 and his wife Hannah (Carter's sister) was dead by 1658.⁹⁷ In 1656 Carter and Johnson, as overseers for the Green children, rented the land to Thomas Dutton. According to Dutton, Carter encroached on the Green land that Dutton rented, building part of his house on his sister's side of the boundary line. The widow Green and her new husband complained of Carter's encroachment on the children's land,

⁹⁵*Mass. Records*, 4 (pt. 1):288.

⁹⁶*Pulsifer*, 1:91, "Woburn Records," 16-24.

⁹⁷*Wyman, Charlestown Genealogies*, 438; file 17.

saying they were thinking of moving because of the disturbance. The night before her death Hannah Carter Green Brown told another woman "that the greatest part of her brother Carters new house stood" on her land and that her own house would be worth ten pounds more if it did not.⁹⁸ The initial efforts to resolve the conflict were informal: after hearing Dutton complain to Carter, a group of men, including Johnson, Carter, and Dutton, looked for the boundary line by using sticks to find holes where the boundary stakes had been. They found that Carter had built over the line.⁹⁹

We do not know why Goodman Dutton felt the need to move beyond informal efforts and bring a case to the county court. Perhaps Carter moved too slowly to resolve the issue, or not at all. Carter may have followed the advice of two respected men who had recommended that he wait until the children came of age to resolve the dispute.¹⁰⁰ At any rate Dutton brought a case against Carter to court in June of 1658. In the summons for the case Edward Johnson, who as commissioner for Woburn signed it, included himself as one of the defendants but he was not mentioned in the county court order book. The jury awarded Dutton use of the disputed land and costs from Carter. However, this did not resolve the conflict.

In October, Johnson, Carter, and Dutton petitioned the

⁹⁸Testimonies of William Johnson and Anna Gardiner, file 17.

⁹⁹Testimony of William Johnson, file 17.

¹⁰⁰Testimony of Edward Winship and Josiah Converse, file 17.

General Court to nominate a committee to resolve the boundary dispute "with all other differences concerned herein."¹⁰¹ A possible reason for Johnson's continued involvement and a clue to the antagonism between Carter and him was the testimony in county court that Carter had said the lease (written by Johnson) was "knavishly made or interpreted."¹⁰² The committee's decision, approved by the General Court in November 1659, showed that Johnson was in some way culpable. The committee ordered that the three men split the cost of the committee's work and the witnesses it called. Thus Johnson, Carter, and Dutton shared responsibility for not being able to settle their differences without resort to the General Court. The committee also ordered that Dutton pay Carter the costs for county court and, ironically, to make acknowledgement before the full meeting on the Lord's Day for "clamorously" and "wrongfully" abusing Carter "calling him theefe & liar, and in saying the said Carter hath stolne the children's land" or to pay ten pounds.¹⁰³

This acknowledgement was ironic because it echoed one that the county court had ordered Ensign Carter to make before the training band in December of 1658 for slandering

¹⁰¹Dutton was added at the bottom of the petition. Mass Archives, 39: 51-52.

¹⁰²Testimony of Thomas Dutton and Richard Gardiner, file 17.

¹⁰³Mass. Records, 4 (pt. 1):407-8. On April 3, 1660, three men, including John Carter, were named as the new trustees for the Green children; Johnson was not one of them.

Captain Johnson.¹⁰⁴ Carter was punished for putting into words the sentiments of several selectmen: that Johnson had falsified the town records. A dispute had risen over the course of a road between the meeting house and selectman, church founder, and deacon Edward Converse's mill.¹⁰⁵

According to Johnson's records, a road committee had laid out a straight course for the road nine years before. Johnson's effort to confirm this course met with strong opposition from Carter and Converse. Their opposition resulted from the road's going through (and thus taking from them) part of their land. The dispute had been roiling for a while before Carter precipitated its exposure in the county court by challenging Johnson in a way he could not ignore.

The testimony supporting Carter in the slander case includes statements by selectmen and members of the road committee. Three of the five selectmen, led by Edward Converse, testified to inaccuracies in the town record, one of which was Johnson's statement that the committee had returned a definite course for the road. Converse, John Mousall, and James Tompson testified that Johnson had written the road into the record in the face of the committee's refusal to commit themselves and the selectmen's opposition. Another omission from the records that they reported was an

¹⁰⁴Pulsifer, 1:161-62, file 16.

¹⁰⁵George M. Champney, "Woburn," in Samuel Adams Drake, *History of Middlesex County, Massachusetts*, 2 vols. (Boston, 1880), 2:526-27.

order by the selectmen concerning the closing of gates and bars in corn fields. They also testified that having challenged Johnson's right to transport timber over a piece of the town's land and asking him to show the record of the right he claimed, he responded that he had not recorded it "for ends best knowne to hisellf." To further undermine the records, Converse testified that Johnson had written that Converse was present at a meeting in 1640 that he had not attended.¹⁰⁶ The selectmen were supported by two of Converse's sons who also claimed that they had been at the selectmen's meeting and that the committee had been unable to agree on a course.¹⁰⁷

Evidence from members of the road committee also supported the idea that no course had been laid. The three selectmen mentioned above and another established citizen testified that they heard a member of the committee, who had since died, say that the committee could not decide on a course.¹⁰⁸ Henry Tottingham, one of the two surviving members of the committee, testified that they had only laid out the mill end of the road.

A group of less prominent and younger men opposed Carter and supported Johnson. They stated that the committee had

¹⁰⁶File 16.

¹⁰⁷Testimony of James Converse and Josiah Converse, file 16.

¹⁰⁸Testimony of Edward Converse, John Mousall, and James Tompson and testimony of Henry Brooks, regarding Thomas Richardson's statement, file 16.

laid out the road. They also testified that they had heard Tottingham say that if he testified on oath he would have to say that the committee had agreed on a highway.¹⁰⁹ The final part of the testimony came from a group of men who reported that they had heard Carter issue his slander in front of part of the training band.¹¹⁰

The witnesses break down clearly onto two sides. A group of prominent and long-established town inhabitants, including the three selectmen were arrayed on the side of Carter. Edward Johnson was on the other side, supported by a group of less prominent and younger men. Carter's side was composed mostly of men in their sixties who had signed the original town orders with a couple of younger men (one of Selectman Converse's sons and Carter himself) who had also signed the orders.¹¹¹ Johnson's side, barring Johnson, included no signers of the town orders and no one over forty-

¹⁰⁹See testimonies of William Locke, William Johnson, Robert Peirce, William Simonds, Richard Houlden, and Joseph Knight, file 16.

¹¹⁰Testimonies of William Locke, William Simonds, Robert Peirce, William Johnson, and Samuel Walker, file 16..

¹¹¹Selectmen Converse, Mousall, and Tompson, with Edward Johnson and the three Richardson brothers had been most prominent among the early settlers of the town. The Richardsons had all died by the late 1640s and may have left a power vacuum that was partly responsible for the rift in the town leadership. The original church members in 1642 were John Mousall, Edward Johnson, Edward Converse, William Learned, Ezekiel Richardson, Samuel Richardson, and Thomas Richardson. The selectmen in 1644 were Johnson, Converse, Mousall, Learned, Ezekial Richardson, Samuel Richardson, and James Tompson. Sewell, *Woburn*, 20-25.

seven. Of the witnesses against Carter (including two of Johnson's sons), two were in their twenties, three in their thirties, and three in their forties. Johnson's alignment with the younger men set him at odds with the traditional power structure of the town. His pursuit of gain in the commercial enterprises he engaged in with his sons may have precipitated the disagreements with other leaders.

Johnson's victory in the county court did not affect the path of the Woburn road and the issue seems to have been undecided for a couple more years. Johnson's possibly jubilant entry in the February 1661 town records, reporting that Carter, Edward Converse, and James Converse had "surrendered up" land for the road to the mill, without asking payment of the town, may indicate that he felt that he had won the battle in the end.¹¹² Nevertheless, the land was not given up in 1658 when the issue was before the town and when the fallout appeared in county court. For a time at least, the other selectmen and Carter had successfully restrained Johnson's power in the town. They had forced the issue to be argued again, probably before a town meeting and the selectmen. The fact that Johnson was not selectman in 1659 or 1660 also indicates the town's rejection of his power. Edward Converse served as selectman throughout the period.¹¹³

¹¹²"Woburn Records," 25.

¹¹³Sewell, *Woburn*, 578-79.

The disagreements between Woburn town fathers seem to have filtered down to lower members of the Woburn community and to have spread from the male dominated territory of roads and land distributions into the female one of sexuality. A cluster of cases appeared in 1658 that challenged both male and female authority: two different cases of sexual misbehavior and two serious challenges of formal authority. The cases were made more serious by the refusal of several of the defendants to appear before the county court. The disagreements among town fathers, lasting over the better part of the 1650s, may have fed into the misbehavior the town's young people and the failure of other authority figures, men and women, to control their behavior.

Three different but related situations brought the Read brothers, who were in their early to mid-twenties, and their wives to the notice of the Middlesex County Court in 1658.¹¹⁴ In 1653 or 1654 Ralph Reed boasted about an incident that occurred when his brother George's wife Elizabeth stayed at his house while her husband was away from home. Elizabeth slept in the same bed with Ralph and his wife Mary. He reported in the hearing of two young men, and perhaps others, "that his wife lay in the middle betwene them & that he put his hand over his wife & felt [Elizabeth's] privy parte & that she put her hand over to him & felt his" and she

¹¹⁴Sewell, *Woburn*, 630.

marveled that "hee was soe bigg & her husband soe little."¹¹⁵ He had also bragged "that his brother was beholding to him for his two boyes that were twins."¹¹⁶ News of the unusual sleeping arrangements that Ralph Read described had circulated through the community. When Marjorie Clark, aged sixty, and Judith Simonds, forty, visited Ralph's wife Mary while she lay in after childbirth, they questioned her about the sleeping arrangements. When they asked "where the man laye whether or not hee did not lye upon the ground," Elizabeth Read answered for her sister-in-law, "noe I promis you hee layse in his bed." When the two women expressed disbelief that they could all fit "civilly" and without crowding, she assured them that they all slept in one bed comfortably even in the heat of summer, with Elizabeth sleeping across the foot of the bed. Her brother, she explained, slept without waking until morning.¹¹⁷

Elizabeth Read got into trouble in her own right for unseemly overtures she made to a young man. One day in 1653 or 1654 her sister-in-law Mary Read was visiting at Elizabeth Read's house and William Locke stopped by to light his pipe of tobacco. While Locke had the tongs from the fire in his

¹¹⁵Testimony of William Locke and John Johnson, April 6, 1658, file 21. John was Edward Johnson's son and married Ralph Reed's sister Bethiah in 1657, Sewell, *Woburn*, 631.

¹¹⁶Examination of Ralph Read, April 6, 1658. The twins were born November 14, 1654 and died within a few hours, Sewell, *Woburn*, 631.

¹¹⁷Testimony of Marjorie Clark and Judith Simonds, file 21.

hands, Elizabeth, calling to Mary to join her, threw a child off her lap and "Layd her ha[n]d uppon his Dublet Skerts & sayd to her sister here is a handful." Elizabeth ignored Locke's demand that she "bee quyet and . . . let him alone."¹¹⁸

Both Mary and her husband Ralph were concerned about the situation and called in neighboring women to help. Ralph Read went to Marjorie Clark's house and told her that his brother George's wife "had attempted to serch a younge man." Though she asked, he would not tell her the young man's name, but told her that the young man had not been at fault.¹¹⁹ Like her husband, Mary Read also called on an older woman, Martha Houlden in her case, to "go and dele with" Elizabeth.¹²⁰ The women they had asked for help, Clark and Holden, along with Judith Simonds, together came to listen to Mary Read's description of the incident. After Mary told the story, Elizabeth responded that she had only said she would search him if she could, but had not actually done so. However, she must have admitted her fault eventually, because

¹¹⁸Testimony of Marjorie Clark, Martha Houlden, and Judith Simonds, and testimony of Elizabeth Read before Edward Johnson, file 21.

¹¹⁹Testimony of Marjorie Clark, file 21. Clark testified that Read "desired to speake with her," which probably means that he asked to speak to her alone.

¹²⁰Houlden gave her age as thirty in her testimony but was probably about five years older, as her first child was born in 1642 (when she would only have been fourteen if she had been born in 1628), Savage, *Genealogical Dictionary*, 2:445. Her husband was about forty-three in 1658.

Marjorie Clark told another neighbor "that shee had dealt with [Elizabeth Read] for it and shee had acknowledged her fault and hoped she should bee more carefull for time to cum." ¹²¹

In going to discuss the problem with the older women, both Mary and Ralph were careful to make clear that William Locke had not been at fault, had "medeled not with her but defended him selfe." William Simonds, Judith's husband, was concerned with this question when he went to Ralph Read's house to question Mary about the incident. Mary acknowledged that it had happened and answered Simonds's question "whether William Locke was in folte" that "hee medeled not with her." The situation thus dealt with, it receded from community concern. However, Elizabeth's promises of amendment were not completely fulfilled. Late one night some time later, as Elizabeth lay in bed with Abigail Wyman (her husband's sister), she called to Francis Wyman that there was room in the bed for him, though he did not accept the invitation.¹²²

The third situation involving the Reads was the behavior of George Polly. Polly had strong ties to Woburn, but does not seem to have lived there until the 1660s. By 1658 he had an extensive business as an animal trader, supplying many of the men of Woburn with oxen, horses, and other cattle.¹²³

¹²¹Testimony of Frances Kendall, file 21.

¹²²Sewell, *Woburn*, 631; confession of Elizabeth Read before Edward Johnson, file 21.

¹²³See undated testimony regarding George Polly, file 21. In

Polly was charged with misdemeanors, probably occurring during 1657, that included "keeping at the house of Rallph Read upon sabbath dayes and Abiding there all night." There seems to have been some suspicion that he and Mary Read were acting improperly. One night when he went to Richard and Martha Holden's house to borrow a half bushel measure to use to do an errand at Ralph Read's house, Houlden asked him for some help in examining two sick cows. While they were examining the cattle, the Woburn constable came and "apprehended" him.¹²⁴

The first ripples from the misbehaviors of the Reads came to the county court in 1657 when Mary Read, seemingly an innocent bystander, was presented in October by the grand jury for suspicion of uncleanness and was summoned to the county court to answer a charge of uncleanness in December. Ralph Read, Mary's husband, was listed as one of the witnesses.¹²⁵ No sign of the case appears in the court order book. Perhaps the charge resulted from George Polly's perceived excessive visits to Mary and Ralph's house. Ralph Reed later claimed that the case had not been tried because the main witness refused to testify, because he knew he would

1659 he may have been living in Medford because the Medford constable was ordered to warn him to appear in court, file 24.

¹²⁴Testimony of Richard and Martha Houlden, file 21.

¹²⁵The other witnesses listed were Samuel Walker, Richard Houlden, and Daniel Black, file 18.

be proved wrong.¹²⁶

The next official action against the Reads was a case brought before the Woburn commissioners to end small causes in April of 1658. Edward Johnson summoned Ralph and Elizabeth Read to appear before him with a list of witnesses that included Mary. Edward Converse and John Mousell, Johnson's adversaries in the road disagreement, were the other commissioners that year.¹²⁷ Testimony from the April session survives in the county court papers. Ralph admitted everything except "he sayd he layd not not his hand one that part of the woman." He desired "the Lord would give him repentence for the same." Elizabeth confessed her misbehavior with William Locke but denied the scene in bed that Ralph had boasted about.¹²⁸ Both Elizabeth and Ralph were probably bound over to appear at the June county court.

None of the defendants appeared in court that June.

Fear or bravado got the better of Ralph Read before the court

¹²⁶Read said that Richard Houlden had informed against his wife to the grand juror and then refused to testify in court. Petition of Ralph Reed April 5, 1659, file 23. But Houlden was one of the main witnesses in support of George Polly, which seems to argue against Mary Read's presentment having anything to do with Polly. We also do not know Martha Houlden's role in Mary Read's troubles. She was one of the three women who examined Mary about Elizabeth's behavior.

¹²⁷The records do not include a list of the commissioners who heard the case. It could have been two or all three. Some of the testimony is written in Edward Johnson's hand, so we know he was present.

¹²⁸Testimony of William Locke and John Johnson with acknowledgements of Ralph Read and Elizabeth Read, file 21.

date and he fled, forfeiting forty pounds. Robert Peirce and Francis Wyman sued him for their half of the bond he had given to appear at the court. The jury awarded them twenty pounds and costs. The court attached Read's farm to cover the bond and Wyman and Peirce were empowered to take care of Read's crops. Captain Johnson and Edward Converse were nominated by the court to view Read's property and inform the court about it at the next session. After Read returned from his flight, Peirce rebuked him for not appearing. Read then made his situation worse by boasting that he had gone off with his pistol loaded and would have shot anyone who came after him.¹²⁹

Although Elizabeth Read did not appear either, her husband appeared for her and the court accepted the excuse he gave. Pregnancy must have been her reason: two days later she gave birth to a daughter.¹³⁰ Her husband gave a forty pound bond for her appearance at the next court.¹³¹ At some point George Polly also forfeited his bond, though no record appears in the court order book. The next court was scheduled for October of 1658 but was not held because not enough magistrates were present.¹³² The court's cancellation

¹²⁹Pulsifer, 1:155, 159; file 16; testimony of William Simonds, Robert Peirce, and Joseph Knight with confession of Ralph Read, unidentified testimony, file 21.

¹³⁰Sewell, Woburn, 631.

¹³¹Pulsifer, 1:155-56.

¹³²Pulsifer, 1:160.

may explain the partial nature of the Read and Polly records. It seems likely that Elizabeth appeared with her new baby and the two magistrates present chose not to take a new bond for the next court, ending her case there. Appearances by Ralph Read and George Polly would have started them on the road to rehabilitation.¹³³ Read and Polly flooded the court with petitions in the spring and summer of 1659.¹³⁴ Somehow along the way Read's forfeited bond seems to have become a fine. In April of 1659 his "fine" was abated by thirty pounds and George Polly's by ten.¹³⁵ With a June 1659 petition from Read and Polly, the situations fade from view. The Reads and the Pollys all remained in Woburn, raising families and achieving moderate prosperity. None held significant town office, but their sons achieved greater prominence.¹³⁶

The legal troubles of the Reads and of George Polly were embedded both in the town of Woburn and in the network of

¹³³George Polly's April 15, 1659, petition mentions three court appearances. This supports the idea that he appeared at the cancelled October court, then in December and April, file 21.

¹³⁴Petition of George Polly April 15, 1659, petition of Ralph Read and George Polly, June 22, 1659, petition of Ralph Read, April 15, 1659, file 21. Petition of Ralph Read April 5, 1659, undated petition of Ralph Read, file 23. The April 15, 1659, petitions would have been the acknowledgement required by the court for the partial remission of their fines. Read and Polly may also have appeared before the Court of Assistants (the court's records do not survive for this period); Cambridge constable John Watson put in a bill for carrying them to Boston and to the county court, file 24.

¹³⁵Pulsifer, 1:179-80.

¹³⁶Sewell, Woburn, 629-32.

their neighborhood. Ralph Read explicitly connected his legal troubles to the disruptions in the town in a rambling petition to the court. He argued that the witnesses against him were limited to those who had accused him and that Edward Johnson acted against him out of prejudice. Read traced this prejudice to a dispute over timber taken off Woburn town lands. He told the court that he had accused Johnson and his sons in a town meeting of taking excessive timber off the common. Johnson had replied that it was a "bould impudent and Audacious lie." Read reported that he and two other men had shown a committee the tree stumps and that a town leader had asked Johnson for an acknowledgement of his fault. Johnson refused and "instead thereof hath ever since as opportunity hath presented hath manifested an evill spirit against mee and so hath his sonne John." Read claimed to have heard that Johnson had committed some miscarriages toward two women and to have spoken to Johnson about it, "after that he was the more incensed against mee."¹³⁷ Johnson's outrage at this contemporary of his sons, who was not even a church member, having the temerity to speak to him of his supposed misbehavior can only be imagined. However, Read's petition reveals clearly the vulnerability of Woburn's hierarchy, perhaps due to Johnson's disagreements with other town leaders.

Neighborhood connections also appear strongly in the

¹³⁷Petition of Ralph Read April 5, 1659, file 23.

cases. An undated testimony in support of Polly presented an impressive array of witnesses to his getting along well with Woburn inhabitants, of not being at the Read houses at inappropriate times, and of having good reasons to be there when he was. Richard and Martha Houlden, neighbors of the Reads, testified that Polly had not been around the Reads' houses when he should not have been. George Read explained that Polly had come to his house to borrow a bottle to take water to the sick Ralph Read. Two young men explained that he had stayed in Woburn one night awaiting pay for a horse he had sold. Other neighbors explained delays resulting from situations relating to other animals he sold. Several also testified to his good character.¹³⁸

Even more significant are the efforts to control and investigate the Reads' behavior that appear in their neighbors' testimony. For close to four years, the only action taken against the Reads was by their neighbors. In particular, the women of the community dealt with the situation and, we can assume, kept a careful eye on the Reads so that it would not happen again. Both Mary and Ralph Read sought out older women to help them deal with Elizabeth Read's misbehavior. Ralph visited sixty-year-old Marjorie Clark, who advised and reprimanded Elizabeth. Clark was the oldest of the three women to hear Mary's description of Elizabeth's misbehavior and she took authority to act in the

¹³⁸File 21.

situation. Her authority was particularly important because the two young Read wives did not have family members to help guide them. They had both lost their mothers when young and their mother-in-law had returned to England. In addition, they had both left Watertown, where their fathers and step-mothers lived.¹³⁹ The older women held both a general authority in the community, and were ready to step in to take the place of mothers in controlling and guiding young women when necessary.

The attack on William Locke activated the community network as well. The first priority of the neighbors was to show that Locke was not at fault. Goodwives Clark, Houlden, and Simonds made clear in their testimony that Locke had told Elizabeth to leave him alone and that his only reason for being in the house in the first place was to get a light for his pipe from the fire. William Simonds had gone to Elizabeth Read to be sure Locke was not at fault. In addition to being a neighbor, Simonds was connected to Locke through his wife Judith, who had been a servant to Locke's kinsman Nicholas Davis and had probably come over on the same ship as Locke. Even Ralph Read was concerned that Locke not be blamed, and told Marjorie Clark that the young man had not meddled with Elizabeth.¹⁴⁰

¹³⁹Savage, *Genealogical Dictionary*, 2:545, 3:426, 515, 517; Sewell, *Woburn*, 630.

¹⁴⁰Savage, *Genealogical Dictionary*, 2:392; testimony of William Simonds, testimony of Marjorie Clark, testimony of Martha Houlden, file 21.

The interconnectedness of the people involved in the Read case provides a good example of how community and family networks became interwoven. The misbehavior began in the families of two brothers; one of the men who gave surety for Ralph Read's bond was his wife's uncle and the other had been married to his wife's aunt before remarrying Ralph's sister. Marjorie Clark, who played a large role in trying to deal with the problems on an informal level, was from Watertown, previous home of Mary and Elizabeth. In addition, Clark's daughter Mary had married William Locke, the young man Elizabeth had "searched," in 1655. The Reads were also connected to Edward Johnson because George and Ralph Read's sister Bethiah had married Johnson's son John (who had been a witness to Ralph's boasting) in 1657.¹⁴¹ These family connections augmented the network that grew up around the neighborhood and community in which these people lived and worked.

The story of Ralph Read and his sister-in-law Elizabeth Read's actions and subsequent appearances before the county court is a story of failures. The initial failure was in the miscreants' lack of control over their own behavior, but this was not a control that Puritans expected to work all the time. The other failures were failures of the community: failures of the neighbors, particularly the women, to control

¹⁴¹Sewell, *Woburn*, 630.

the Reads' behavior before it became so outrageous that it had to be punished in formal ways, failures of the men in the community to force Ralph Read to appear in court and thus preserve the bond they had given for him, and finally, failure of the town's authorities like Edward Johnson to keep the behavior of the town's inhabitants within the bounds expected by Puritan society. The greatest shortcoming that Johnson had to face was the fact that it may have been the failure of town leaders to keep their own behavior within these bounds that allowed the young people to get out of hand.

We do not have any direct proof to show why, after so long, the Read case came to court. Perhaps increasing disruption within the town called into question all exercise of authority, including the informal resolution of the Reads' misbehavior. The late 1650s were an unusually heavy time for Woburn at the county court. In addition to the disputes involving John Carter and Edward Johnson and the Reads, a new batch of misbehavior, possibly due to the disruptions in the town, appeared in that year. The new misbehavior included people who had been involved in the Read case and new actors like George Polly's wife Elizabeth and her brother Increase Winn. Elizabeth Polly was brought to court in May of 1658 for kissing Scottish servant John Crownwell while they were alone in her house (Goodwife Polly had sent the maid to town

on an errand) and traveling alone with him at night.¹⁴² Crownwell confessed to the kiss and said that he had eaten some strawberries and being sick had gone to lie in the chamber and had fallen asleep. They both received the harsh penalty of ten stripes, so it is likely that the court thought they might have been guilty of adultery.¹⁴³

The upheaval in Woburn seems to have made it particularly vulnerable to the airing of its troubles in the county court. Given the various challenges to authority that occurred in the town, it was particularly important that all challenges be dealt with firmly. In April of 1659 the Reads were able to get a kind of revenge against William Locke and William Simonds, victim and witness respectively to the Read's misbehavior, when the two men came to court on charges of seditious carriage to authority. Simonds and Locke had made a fundamental challenge to the authorities, not just in Woburn, but in Massachusetts Bay. Neither was a freeman, nor presumably, a church member, but they attempted to usurp the privileges of both.¹⁴⁴ They voted, a privilege granted only to freemen, for Woburn's deputy and the colony's governor and assistant governor. They challenged the exclusivity of Woburn's church by boasting that they would stay during the

¹⁴²In the Read case Polly was reported to have said that he did not lend a horse to Mary Read because his wife needed it to get to meeting, file 21.

¹⁴³Pulsifer, 1:158. See chapter 2.

¹⁴⁴Do not appear on lists of freemen in *Mass. Records*.

sacrament and see who would stop them. George Read and his wife Elizabeth reported that the men intended to put in their votes for governor "and to cary things as wee wold have them and we think that they could not apose us." Locke and Simonds's confession emphasized the challenge of the colony's authority. They lamented that their acts were "such a folly as would tend to the overthrow of this commonwealth."¹⁴⁵ The behavior of these two men who had supported Edward Johnson in his fight about the course of the road appears wildly out of character with their previous and future blameless careers. Challenge of authority seems to have been a spreading contagion.

The same court session saw another Woburn inhabitant, Increase Winn (Elizabeth Polly's brother), fined for speaking contemptuously of the magistrates, in a case discussed in chapter 2. He had said "that the magistrates never did me good and wishd that they were whipd and that the devill had them."¹⁴⁶ These 1659 cases, along with Dutton's acknowledgement to John Carter for slander in November of that year, brought to an end the unusually large number of appearances of Woburn in the county court.¹⁴⁷ The fissures

¹⁴⁵Pulsifer, 1:158, file 21.

¹⁴⁶Pulsifer, 1:172, file 21.

¹⁴⁷Another Woburn case was heard on April 5, 1659, before the county court, which ordered John Knight to remove a lean-to he had erected in the highway. The town had been unable to resolve the dispute over the course of the road without involving the county court. Pulsifer, 1:172, files 23, 24.

begun among town leaders had reached down to disrupt the everyday world of women and men in their neighborhoods and had come back to challenge town and church order with the actions of Locke and Simonds. Finally the disruptions could not be contained in the town and had had to be settled before the county court and the General Court.

As Edward Johnson had been instrumental to the beginning of Woburn's problems, he attempted to be instrumental in their resolution. In a 1659 petition to the county court, he bemoaned the "sad & lamentable feier [fire] of Contention kindled of late" in Woburn. "Sum of us," he continued, "with watery Eyes & wayling harts have Beheld the same with Constant Expectation of this mercyleless feir [fire] to consume all those outward Comforts that wee have bin heaping together for this 19 years." Worse still was the evil spoken of "O[u]r Lord Christ's" ordinances and the hindering of the propagation of his gospel. Johnson added that the fire went from town to town and from one eminent man to another. He adopted a submissive tone: "My humble request is (for I forget not to whome I speake)" that the court "be pleased to disconntenance all private Complaints & stopp all presentments for this Court for any passionat words Spoken in the Heat of this feir." Leaving resolution to the General Court would thus prevent "aggravation of the Blaze."¹⁴⁸ In

¹⁴⁸Undated petition of Edward Johnson to the county court. The 1659 date comes from his reference to the years they had been working and its grouping in the files.

the ten years since Johnson had begun working on *Wonder-Working Providence*, he had descended from high-flown celebratory rhetoric to the mire of petty squabbling over the fundamentals of settlement and infrastructure.¹⁴⁹ Johnson's pursuit of commercial gain--harvest and transport of timber were at the heart of his disagreements with town inhabitants--brought confrontation with other Woburn leaders that may have started a process he was unable to control. Once authority had been disrupted, it made future disruptions both more likely and potentially more dangerous. The pattern of disruption in Woburn demonstrated the importance of a stable hierarchy of authority, which Johnson and other Puritans advocated, to the maintenance of order on every level of society.¹⁵⁰

A delicate balance obtained between the control exercised on upper levels of colonial hierarchy by the colony's elite and the need for leading citizens like Joseph Hills and Edward Johnson to maintain social order in their communities. Hills tried to carry the independence of the

¹⁴⁹Gallagher, "Introduction," Johnson, *WWP*, vi.

¹⁵⁰The importance of the trappings of hierarchy may be revealed in an October 1660 prosecution of theft against Edward Johnson's servant Joseph Skelton. Johnson called Skelton to him to answer an accusation of theft. When Joseph denied taking anything, Johnson's son Matthew "stroke ofe Joseph's hatte from ofe his head and asked him if that were his manners to stand before his master with his hatte one his head." The stolen handkerchief dropped out. Pulsifer, 1:219; file 24.

Malden church too far. In teaching him his mistake, the General Court was forced to attack the leading citizen of the town of Malden, the man on whom colonial authorities depended to keep Malden stable and ordered appropriately. The resulting disruption reached into the lives of women like Sarah Bucknam and Bridget Squire, creating vulnerabilities for both of them. Even with the support of Hills and other elites, Bucknam was unable to clear her name before the county court of attacks brought by the members of society over whom she would normally have expected to exercise authority. Squire became victim of her husband's explosive rage directed at Hills and herself, and was reduced in the end to petitioning for her right to subsistence from her husband's goods, a right that would have been unquestioned in a better-regulated community.

Captain Edward Johnson also went too far. He tried to use the authority granted him by colony officials to act in his own economic interest in Woburn. Other important townsmen, though not of his stature, worked to stop him. But this battle among Woburn's selectmen had a profound effect on the other inhabitants of the town. While selectmen Johnson, Converse, and Mousell and Ensign Carter battled it out in meetings, women like Marjorie Clark and Judith Simonds found that they could no longer control the misbehavior of young people like the Reads and the Pollys. The vulnerability of the town's leaders did not stop with their disputes about roads, it extended to controlling sexual misbehavior and

being unable to enforce the bonds of miscreants to the county court. Elections for colonial office and the regular operation of the church also became contested areas.

The troubles in Malden and Woburn were cautionary tales supporting the Puritan belief that the stability of government and community were closely linked to the stability of authority within the family. Not only was the community vulnerable to disruption by families that were out of control, but it could go the other way: families and neighborhoods were vulnerable when authorities were not able to control their own behavior without major clashes. The ties between male and female areas of authority were critically strong. If the town fathers were unable to act appropriately, they threatened the ability of town dames to keep their own domain under control. However, the Malden and Woburn cases also suggest that the colonial legal system was eventually effective in buttressing the appropriate hierarchy. Once the disruption was apparent, the county court and the General Court stood ready to reinstate authority structures. The courts were there to enforce the decisions of town leaders and to prosecute slander and sedition. Under their tight control the informal hierarchies of Woburn and Malden were able to regroup and return to functioning again. David Konig has argued that the legal system played this role more and more as the century progressed. As we will see in chapter 5, this greater role caused both less and more of women's role in maintaining

social order to appear in the county court. Both women's and men's informal power became less apparent as the courts stepped in to support community efforts. But formal roles, like that of midwife, grand jurymen, and tithingman became more important.

CHAPTER V

"THE NEGLECT WHEREOF . . . DOTH OCCASION MUCH SIN AND PROPHANES TO ENCREASE AMONG US:" THE REDOUBLED COMMITMENT TO GENDERED AUTHORITY

On May 5, 1674 Martha Allen acknowledged, in front of three witnesses, "that upon a through search of my self by Old Mrs Johnson of Oburn Midwife" she was found "to be wth Child and that the Father of it is Thomas Morgan." That same day Magistrate Thomas Danforth issued a warrant ordering that Thomas Carrier, also known as Morgan, be apprehended and brought before a magistrate. Two days later a group of people gathered for a hearing at Richard Daniel's house in Billerica. Magistrate Daniel Gookin examined Thomas Morgan, "alias Carrier," who "confessed that hee had comitted fornication wth Martha Allen." Martha reiterated her statement "& affirmed in the presence of God that It was only Tho: Morgan that had fellowship wth her in that kind." "It beeing propounded to Morgan that hee should take her wife hee consented."¹ Martha agreed as well. Martha's mother, Faith Allen, was also present and consented to the marriage, saying that Martha's "father did ye like." Then, with Goodwife Allen and the minister's family looking on, Gookin married them. "After som cautions given ym & exhortations made by

¹I have removed an extra "to" from this sentence.

Bro [John] Eliot" (the Indian missionary), Mr. Samuel Whiting (the town's minister), and Mr. Daniel, "I joyned ym in marriage." Gookin "then tooke bond of him in £20 for his & wife's apperance ye next court at Charlestowne."²

Thus the sin of fornication was dealt with. Thomas and Martha confessed. The magistrate explained that the couple should marry and they consented. There with the support of her mother and the Daniel family, fortified by the exhortations of two ministers and a town leader, they married, taking the next step in atoning for their sin. We do not know how the bond for their appearance at the county court affected the mood of the bride and groom, but it must have been a sobering reminder of the punishment still to be meted out for their crime. At the county court they would choose between paying a £6 fine or being whipped, he twenty stripes, she ten. They petitioned for the respite or removal

²Middlesex County Court folio files, Massachusetts State Archives, Boston, file 67 (hereafter cited as file 67); David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686, 4 vols., Massachusetts State Archives, Boston, 3:98 (hereafter cited as Pulsifer). For background on Billerica see Frederick P. Hill, "Billerica," in Samuel Adams Drake, *History of Middlesex County, Massachusetts*, 2 vols. (Boston, 1880), 1:256-60 and Henry Hazen, *History of Billerica, Massachusetts with a Genealogical Register* (Boston, 1883). Daniel was an "English Gentleman" who lived in Billerica for ten years with his "noble wife," then returned to England, Hazen, *Billerica*, 106-7. Gookin and Eliot were in Billerica to visit the Indian settlement of Wamesit. There on May 5, they, and Richard Daniel, had heard sachem Wannalancet, whom they had been trying to convert for several years, profess Christianity. Daniel Gookin, "Historical Collections of the Indians in New England," *Collections of the Massachusetts Historical Society*, 1st ser., 1 (1792): 186-87.

of their punishment, but the court's answer does not appear in the record. It seems unlikely that their request was granted.

The preceding chapters reveal people taking authority in families and communities. These ordinary people also called on the power of the county court and the colony government to enforce their authority. Martha and Thomas Carrier's hearing cum marriage occurred at a time of new activity and concern for the court. A perceived increase in disorder threatened both the colony's stability and its relationship with God. Though this wedding description is the first surviving of its kind for Middlesex, it was probably a fairly common scene among the fornication cases in the first twenty-five years of the county court. Under the watchful eyes of magistrates, ministers, and parents, sin was uncovered and made right before God, community, and court. But to the dismay of magistrates and deputies to the General Court, it was becoming more difficult to convince young men they should confess. All the while the crime of fornication was "much increasing among us."³ Fornication provided a specific example of the fact that the efforts of magistrates, ministers, parents, and communities were no longer as effective in ensuring appropriate behavior of individuals and families. In the 1660s and 1670s, the colonial government

³Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England*, 5 vols. (Boston, 1853), 4 (pt. 2):143 (hereafter cited as *Mass. Records*).

and courts emphatically restated the colony's dependence on family government, and the gendered authority it rested on, to maintain social order in the colony's communities and thereby to continue the colony's special relationship with God.

This chapter looks at three broad areas to consider changes in behavior and the corresponding reemphasis on gendered authority. It begins with a qualitative and quantitative analysis of fornication, considering both the court prosecutions and the actions of those prosecuted for the crime. Next, it considers new laws enacted to deal with the perceived increase in disorder. These included a 1668 law that reiterated the requirement that all inhabitants live under family government, a law of the same year that made a woman's accusation at the height of her travail proof enough to name a reputed father who would be financially responsible for the child, and the 1677 law that created a new official, the tithingman, appointed to watch over families in his neighborhood. Finally the chapter explores the court enforcement of laws concerning family government and a new emphasis on regulating family governors (household heads) who did not control their families.

The following section tells the stories of several fornication cases in detail and presents quantitative evidence charting changes that occurred between 1649 and

1679.⁴ While fornication is a perennial theme in the social history of colonial New England, the chronology of changing punishments, confession rates, and shifts in the sex of defendants is not well known. One reason is that the Middlesex records are unusual in providing precise information on sentences over several decades. Another is that much of the work has been done by looking at premarital pregnancy rates, rather than prosecutions. By looking at these cases in detail, we can see shifts occurring in fornication prosecution throughout this period.⁵

Fornication rates in Middlesex continued to be much

⁴Some information has been lost because the court order book covering the years 1663 to 1671 was destroyed in a fire. However, though most punishments are missing for these years, the folio documents supply a lot of information on the defendants.

⁵Cornelia Hughes Dayton identifies changes in types of punishment and a shift away from confessions. She also describes changes in the eighteenth century, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995), 157-230; For discussions of fornication see John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper and Row, 1988), 32-36, 42-52; Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* (New York: Alfred A. Knopf, 1990), 147-56; Daniel Scott Smith and Michael Hindus, "Premarital Pregnancy in America, 1640-1971: An Overview and an Interpretation," *Journal of Interdisciplinary History* 5 (1975): 537-70; Robert V. Wells, "Illegitimacy and Bridal Pregnancy in Colonial America," in Peter Laslett, Karla Oosterveen, and Richard M. Smith, eds., *Bastardy and Its Comparative History* (Cambridge: Harvard University Press, 1980), 349-61; Carol F. Karlson, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: W. W. Norton, 1987), 198-202; John Demos, *A Little Commonwealth: Family Life in Plymouth Colony*, (New York: Oxford University Press, 1970), 157-58.

lower than they were in England, or would be in the county in the eighteenth century, but between the 1650s and 1670s fornication cases increased at a greater rate than the population.⁶ As table 5.1 reveals, the number of cases doubled between the 1650s and the 1660s (a 100 percent increase). There were twenty-eight percent more cases in the 1670s than in the 1660s. While no conclusive information on population increase exists for these years, it seems likely that it was somewhat less than twenty-eight percent. The smaller increase in fornication cases in the 1670s may have resulted from the disruptions caused by King Philip's War reducing the number of fornications actually prosecuted.⁷ Other changes described below include a shift in the typical punishment from a whipping at the beginning of the period to a choice of whipping or fine at the end. Surprisingly, the amount of fines and number of stripes given in whippings both increased.

⁶See Smith and Hindus, "Premarital Pregnancy;" Wells, "Illegitimacy and Bridal Pregnancy;" and for eighteenth-century fornication cases see Eli Faber, "The Evil That Men Do: Crime and Transgression in Colonial Massachusetts," (Ph.D. dissertation, Columbia University, 1974), 107, 332.

⁷As discussed in the introduction, population figures for Middlesex are difficult to approximate. Using Roger Thompson's figures, the increase from 1666 to 1690 was about twenty-six percent per decade, *Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699* (Amherst: University of Massachusetts Press, 1986), 13. There was one prosecution in 1675 and two in 1676 compared to five in 1674 and seven in 1677.

Table 5.1

Changes in Incidence of and Type of Punishment for
Fornication, 1650-1679

	No. Cases/ No. Defendants	Known Punish- ments	Percent of Known Punishments				
			Whip	Fine	Whip or Fine	Both	Support Only
1650- 1659	14/27	22	59%	9%	32%	0	0
1660- 1669	28/53	25	32% ^a	40%	16%	8%	4%
1670- 1679	36/64	50	32%	0	56%	0	12%

^aIncluding the couple who were whipped and fined makes this value 40%.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court folio files.

Throughout the 1650s and most of the 1660s, both men and women normally confessed to their sin in cases of fornication. Beginning in 1667, men suddenly stopped confessing as often. Though these men sometimes escaped punishment, they did not escape responsibility; a growing number were sentenced by the court to support the child as its reputed father. Women had to face the court alone in increasing numbers of cases as well. In contrast however, when both men and women were punished, men on average received the more severe punishment throughout the period. People of color also received lesser punishments than whites.

Cases in which the defendants ultimately married were never more than half of all cases and while marriage tended to earn defendants reduced punishments at the beginning of the period, it no longer did at the end.

Considering particular cases demonstrates the way in which fornication and its consequences were imbedded in the families of the perpetrators. Each family had an interest in the outcome of the case: both because of the monetary consequences and because of changing household structures that would result from new marriages. The actors were also embedded in their communities, as the testimonies of neighbors and passersby remind us. The testimony of midwives and other skillful women was of continuing importance. It received a new formality due to efforts to deny responsibility, as birth attendants were required both to verify the women's accusation of the father and to certify that the baby had been cared for properly. Another Puritan theme playing in fornication cases is the efficacy of repentance and punishment in resolving sin. Even a woman who was tried for sexual misbehavior three times was ultimately reintegrated into her community as a goodwife (and a good wife).

In the 1660s the Grant family of Watertown was involved in three fornication cases.⁸ While the two daughters of the

⁸A fourth child, Joseph, was involved in a fornication case in 1678, Pulsifer, 3:217.

family ultimately married their lovers, Christopher Grant Jr. escaped marriage, though not a stint in the house of correction. While this family was unusual in the high number of offenses, these three cases, along with a fourth involving Christopher's abandoned lover, demonstrate many of the changes and continuities found in fornication cases between 1649 and 1679.

In the fall of 1659 Abigail Grant and Roger Rose were courting. Roger, though servant to a Boston merchant, offered Abigail marriage "& prevayled so farr wth her, as to have the carnall knowledge of her body."⁹ In this regard the couple was similar to many other premarital fornicators. Both informal and formal marriage contracts were a signal for some couples to begin an intimate relationship.¹⁰ There seems to have been some tolerance of this behavior. As we see in table 5.2, in the 1650s those guilty of premarital fornication received lesser punishments on average than those who did not marry; in the 1660s their fines were smaller while whippings were the same. However, by the 1670s punishments were about the same.

⁹Examination of Abigail Grant, file 27.

¹⁰See Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), 67-69.

Table 5.2

Comparison of Punishments for Premarital Fornicators for Defendants Who Did Not Marry, with Percentage of Cases that Were Premarital, 1650-1679

	<u>MARRIED</u>		<u>DID NOT MARRY</u>		% Fornication Cases That Were Premarital
	Avg. Whipping	Avg. Fine	Avg. Whipping	Avg. Fine	
1650-1659	10	34	15	70	36%
1660-1669	17	106	17	220	48% ^a
1670-1679	16	107	15	108	33%

Note: In all premarital fornication cases recorded here, both partners were tried.

^aExcludes one case where it is unknown if they married.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court Folio Files.

Premarital fornication never quite reached fifty percent of prosecutions. The low figure of thirty-six percent for the 1650s is surprising given the emphasis on marriage as part of the resolution of the sin and calls for some explanation. Some of the defendants could not marry. The fourteen cases that occurred in the 1650s included four cases where one of the partners was married to someone else, including a couple who repeated their offense. After excluding these instances, fifty percent of those who could

marry did. In a fifth prosecution, discussed below, the couple was enjoined to marry but the woman refused. At the other end of the period, the lower percentage of premarital fornication in the 1670s may reveal reduced efforts to prosecute premarital fornication, a crime that must have seemed less important when compared to larger numbers of couples who did not marry.¹¹

After Roger and Abigail began their sexual relationship, they embarked on a series of journeys. Abigail explained in her confession that Roger had convinced her to follow him to Piscataqua in Maine. Once she was there, she found him ready to go to sea and he asked her to go back home to her parents to wait for him, promising that on his return he would marry her. We do not know where Abigail went at this time but Roger took much longer to return home than he had expected. He reported to the court that the merchant who commanded his ship changed his mind about its itinerary. Instead of the quick journey intended, the ship sailed from one port to another. Finally, in Jamaica, Roger left the ship and returned to New England as a passenger on another ship. There, in the spring of 1661, he married Abigail.¹²

In the interim Abigail too had made a journey. Whether she went home to her parents or not, the following summer she was in Providence, where she stayed in the house of Roger and

¹¹Smith and Hindus, "Premarital Pregnancy," 553.

¹²Undated petition of Roger Rose, file 26.

Mary Mawrie for some months. Sometime that summer, she bore a daughter. Sadly, though the baby "was a likely child to live," she sickened a week later with an illness "common to old & young in this Countrey;" in another week she was dead. That October, the women who attended Abigail during her labor and afterwards, among them Mary Williams, Roger Williams's wife, testified in writing that Abigail had "carefully tended & tendred" her daughter "as she was able."¹³ Events occurring at such a distance were suspicious and made the testimony of the Providence women, that the mother was not responsible for her baby's death, necessary. In addition Mary Mawrie testified that Abigail had lived with her "divers month[s] & did carry her selfe soberlie all the time bewailinge her transgression, offentimes, wth troble of spiritt."¹⁴

By October of 1660 Abigail had returned to Watertown. In March of 1661 she was examined by Thomas Danforth and gave her confession in preparation for the April court day at which the magistrates sentenced her to the moderate punishment of a choice between a forty shilling fine and an unspecified whipping.¹⁵ Soon after her sentence Roger returned, was presented by the grand jury, and they married.

¹³James Savage, *A Genealogical Dictionary of the First Settlers of New England*, 4 vols. (1860-62; reprint, Baltimore: Genealogical Publishing Company, 1965), 4:568.

¹⁴Testimony of Mary Williams, Rebecca Throckmorton, Sarah Whiffell, and Mary Mawrie, from Providence, October 6, 1660, file 26.

¹⁵File 26; Pulsifer, 1:230.

In June he appeared before the county court and was sentenced to a forty shilling fine and unspecified costs. The costs may have been heavy depending on what was involved in getting the Providence testimony. In any event, Roger's new father-in-law paid the fine for him, as he had probably already paid his daughter's.¹⁶

The court's sentence of a whipping or fine for Abigail and a fine for Roger fit into the typical range shown for the 1650s and 1660s in table 5.1, as whippings gave way to a choice between fines and whippings. The mid-1650s shift from whippings to a choice that Cornelia Hughes Dayton has found in New Haven County also occurred in Middlesex.¹⁷ From 1650 through spring of 1655 there were six cases with known punishments, five of which were whippings. From the fall of 1655 on there was a mix of punishments. The proportion of defendants who were fined or had a choice between whipping and fine remained the same in the sixties and seventies.¹⁸

The forty shilling fines Roger and Abigail were sentenced to pay were on the low end for the 1660s. They appeared in court as the transition to more severe fines and whippings seen in table 5.3 was taking place. I cannot

¹⁶Undated grand jury presentment, file 26; Pulsifer, 1:234.

¹⁷Dayton, *Women before the Bar*, 184.

¹⁸Adding the two columns together in Table 5.1, both are 56%. There is no indication why Abigail was given a choice and Roger a fine. Perhaps it was clear he would pay the fine so the choice was not mentioned; or the fact that they had married by the time he appeared in court made the difference.

pinpoint the exact timing of this transition because no information survives on punishments from 1664 to October of 1668.¹⁹ Three high fines paid in 1662 and 1663 may have signaled a shift to a new severity or might have been higher than usual because the defendants were the children of elites. David Dunster, former Harvard president Henry Dunster's son, was fined a whopping £20 for his fornication with a servant (they did not marry), while county Marshal Michelson's daughter Bethia and her new husband Daniel Weld paid £20 together. The transition had taken place by the October 1668 court, where the four fornication defendants received three £10 fines and a twenty stripe whipping.²⁰ When punishments were again recorded consistently in the fall of 1671, the fines and whippings were regularly higher than they had been in the 1650s. The typical punishment had gone from twelve stripes or forty shillings to fifteen stripes or £5, down somewhat from the figures based on the scanty data available for the 1660s. The change in fine was not due to inflation as, if anything, this was a period of deflation.²¹

¹⁹Not enough of the magnitudes of whippings or fines appear in the published records of Essex county to see if a similar transition took place there during this period. George Francis Dow, ed., *Records and Files of the Quarterly Courts of Essex County, Massachusetts* (Salem: Essex Institute, 1913), vol. 3.

²⁰Thomas Danforth's copy of the county court record for October 6, 1668, file 48; petition of Abraham Hill, file 50.

²¹John J. McCusker and Russell R. Menard, *The Economy of British America, 1607-1789* (Chapel Hill: University of North Carolina Press, 1985), 67.

Ready to do battle with sin, Middlesex county magistrates responded to the increase in fornication with an increase in punishment.

Table 5.3

Mean Severity of Whipping or Fine in Fornication Convictions, 1650-1679

	Avg. Whipping (No. of Stripes)	Range	Avg. Fine (Shillings)	Range	Most Common Punishment (Mode)
1650- 1659	13	6-21	42	20-100	12 str./40s.
1660- 1669	17	10-20	131	20-400	20 str./200s.
1670- 1679	15	10-30	108	30-267	15 str./100s.

Note: Half of fines for married couples are assigned to each defendant.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court Folio Files.

Abigail and Roger's fornication combined both typical and unusual elements. Acquiescence to a man's importunities after a promise of marriage was a common explanation given by female defendants: both those who ultimately married their lovers and those who did not. The Providence women also filled usual roles: they determined questions of fact at the birth--in this case whether the baby had been appropriately

cared for--and also judged the young woman's behavior and state of remorse. Payment of fines by fathers or masters was also common, as were Abigail and Roger's confessions and contrition.²² Abigail's journey was unique, though another pregnant Middlesex woman also sought refuge in Rhode Island in 1671.²³ As we will see below, at least one other marriage was delayed by the future bridegroom putting to sea. The death of Abigail's baby is poignant, but otherwise the Roses' experiences were not. Despite their rather desperate journeyings their marriage and punishment returned them to the folds of family and community. When next they appeared in the court records, in testimony regarding her sister's fornication, Abigail was an apparently happy Boston goodwife and Roger was acting loyally in the interests of his wife's family.

Of the twenty-four men accused of fornication between 1650 and 1666, eleven left a record of their response to the charge, and of these, all but one confessed. As David Hall has pointed out, confession was an important ritual in early New England. While an unexposed sin "turned the guilty into slaves of Satan," confession cleansed both the individual and the commonwealth and restored "moral order to the body

²²For payment of fines see Pulsifer 1:113, 133, 217, 230, 288; file 47.

²³File 55. Mary Ball's master Michael Bacon Jr., who was also the father of her child, sent her to Rhode Island but she returned before she gave birth.

social."²⁴ As a result, refusal to confess threatened a frightening disorder. However, as table 5.4 demonstrates, from 1667 on it became quite common for men to deny that they had committed fornication. Between 1667 and 1669 not a single man is known to have confessed when first accused. Six denied the accusation and the response of the other eight is unknown. As the ritual of confession lost some of its efficacy in dealing with fornication (for men at least), a new solution was required. It came in the 1668 bastardy law, which provided for the support of infants even in cases where the father refused to admit guilt, and incidentally gave a new formality to the midwife's examination of the mother about who the father was.²⁵ Perhaps this law and other steps that magistrates took helped reinvigorate the confession ritual, because men started confessing again in the 1670s, though in much smaller numbers. Three of the four men who definitely confessed in that decade (it is not always apparent from the surviving records) had married their partners and were appearing in court with them.²⁶

²⁴David D. Hall, *Worlds of Wonder, Days of Judgment: Popular Religious Belief in Early New England* (Cambridge: Harvard University Press, 1990), 172, 174-75, 185 (quotes on 174, 185). See also Paul Boyer and Stephen Nissenbaum, *Salem Possessed: The Social Origins of Witchcraft* (Cambridge: Harvard University Press, 1974), 214-16.

²⁵*The Colonial Laws of Massachusetts. Reprinted from the Edition of 1660, with the Supplements to 1672. Containing also, The Body of Liberties of 1641* (Boston, 1889), 257.

²⁶Dayton found that the period from 1670-1690 saw the "last gasp" for men's confessions in New Haven, *Women before the Bar*, 187.

Table 5.4

Frequency of Confessions by those Accused of Fornication by Sex, 1650-1679

	Confessed (% of Known Responses)	Denied (% of Known Responses)	Unknown
1650- 1659			
men	5 (100%)	0 (0%)	8
women	6 (100%)	0 (0%)	8
1660- 1669			
men	5 (42%)	7 (58%)	13
women	14 (100%)	0 (0%)	14
1670- 1679			
men	4 (27%)	11 (73%)	13
women	16 (100%)	0 (0%)	20

Confessions by Sex 1660s Only

	Confessed (% of Known Responses)	Denied (% of Known Responses)	Unknown
1660- 1666			
men	5 (83%)	1 (17%)	5
women	7 (100%)	0 (0%)	5
1667- 1669			
men	0 (0%)	6 (100%)	8
women	7 (100%)	0 (0%)	9

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court Folio Files.

When Abigail Grant Rose's sister Mary became pregnant in 1667, her lover Daniel Smith at first denied that he was the father. His refusal to confess, and the Grant family's persistence, meant that a detailed view of the process of their fornication prosecution appears in the records. His case reveals the importance given to resolving sin through confession as well as the various interests of each of the defendants' families in the outcome of the case. Both families sought to influence his decision. While Mary's family worked to convince Daniel to own up to what he had done, Daniel's mother worried that he would be entrapped and tried to protect her son from their persuasions.

In April of 1667 Mary Grant conceived a child. She had been keeping company with Daniel Smith for a year. For the most part, he had visited her at her parents' house, though on one occasion, when her married sisters (one was Abigail) came to stay over with their husbands, she went to stay at a neighbor's and sneaked away to meet him. According to Mary, Daniel was with her many nights "intensing [enticing] her into his companie, by saying he did intend to make her his wife." One night he "lay with her in ye leane to of ye Barne." When she protested that "to use her as if she were his wife" would be a sin, he told her that it was not. Another night he told his mother he was going bass fishing and instead came and lay with Mary. Mary's mother Sarah was concerned about her. Late one night she found that Mary was not in her bed and went to look for her. She found her with Daniel in the lean-

to. Sarah chided Daniel "for his unseasonable companing with her daughter," laying her hand on him to be sure who it was with her daughter. On another night she found them in a back room in the house.²⁷

It seems likely that when Mary's pregnancy became apparent everyone in the Grant family assumed that Daniel would marry her without any difficulty. Brother-in-law Roger Rose reported that he had seen "so much of their being in company together that I was in dayly expectation of their being published together according to the usuall way." Neighbors saw him regularly visiting the Grant house.²⁸ Smith had not seemed to be trying to hide anything, but when confronted by magistrate Thomas Danforth, he denied that he was the father and refused to marry Grant.

When Daniel proved reluctant, Mary, her mother, and the Grant's maid servant accused him in testimony given in November before Thomas Danforth.²⁹ It is likely that when this did not alter Smith's refusal, Thomas Danforth issued his December 15 order that the witnesses appear before him at his house the following day. In testimony given that day, Roger Rose and some neighbors supported Mary and her family's

²⁷Testimony of Mary Grant, Goodwife Grant, and Mary Smith, file 44.

²⁸Testimony of Roger Rose, testimony of John Trayne Sr. and John Knap, file 44.

²⁹Testimony of Mary Grant, Goodwife Grant, and Mary Smith, file 44.

description of her relationship with Smith. They also described a scene from the previous day in which the conflicting desires of the Grant and Smith families were exposed. Roger Rose had gone to "Widow Smith's" house to try to convince Daniel to admit his relationship with Mary. Roger asked twenty-five year old Martin Townsend to come with him, thereby providing a second witness to anything Daniel said. When they arrived Rose stayed in the yard while Townsend went inside to get Daniel. At first Townsend did not tell Daniel and his mother Elizabeth who was waiting in the yard, and when he did, neither mother nor son wanted Daniel to go out to talk to him. Instead Daniel went out to call Rose in. When Elizabeth Smith saw that another young man had arrived in the yard (and thus another witness) she worried to Townsend "they will entrap him & catch my sonne if they can."³⁰

And indeed Rose was "reasoning the case with" Daniel Smith, asking him "why hee did aske his sister Mary Grant wherfore shee did not tell him of" her pregnancy sooner. Rose later reported that Smith "denyed nothing which I did lay to his charge absolutely."³¹ Rose and the other two young men returned to the house with Daniel where all of them sat with Elizabeth Smith for "a good space" by the fire. There

³⁰Testimony of Martin Townsend, file 44.

³¹Testimony of John Trayne Jr., testimony of Roger Rose, file 44.

Rose continued his campaign, merrily calling Daniel's mother aunt and Daniel Smith brother, and encouraging Daniel "to owne the truth & cleare yor conscience & give glory to God." But Daniel's mother forestalled Rose. She retorted "I desiere yt hee may speake the truth." "But before Daniel Could express himselfe the widdo againe said but hee hath said & owned the truth already."³² For the time being Elizabeth Smith had outmaneuvered the Grant clan.

The court order book is missing for this period but it seems likely that the testimony of Roger Rose and the Grants' neighbors with that of the women from the Grant household was presented later that December at the county court. There Mary must have confessed to fornication and received her punishment while Daniel Smith was required to give bond to appear at the April court. The threat of county court action seems to have finally convinced him to marry. In January his daughter was born and in February he and Mary Grant were married.³³ Ultimately the pressures of the Grant family and their neighbors, supported by the power of the courts, had overcome his mother's and perhaps his own resistance. When he appeared at the April court the evidence included the statement he had made to Thomas Danforth that March,

³²Testimony of Martin Townsend, file 44.

³³Watertown Historical Society, ed., *Watertown Records comprising the First and Second Books of Town Proceedings with the Grants and possessions also the Proprietors book and the first book and supplement of Births, Deaths, and Marriages* (Watertown, MA, 1894), 30.

confessing that he had done wrong in denying his sin, as well as he and Mary's abject confession of their premarital fornication.³⁴

Daniel had resisted a wide range of efforts to make him confess. Confession could occur at four different levels: in the family or community, in church if the miscreants were members or the children of members, at a magistrate or commissioners' court, and in the county court. A couple might confess with encouragement and pressure from just their own families and neighbors or they might bow to the pressures of church discipline. If not they would be examined by a magistrate, and if necessary supporting evidence would be collected. Had the reluctant groom relented at this stage the testimony would not have been necessary at the county court. It seems likely that many hesitant young men were convinced by their confrontation with a magistrate. However, like an increasing number of men, Smith held out and the evidence was presented to the county court.

The testimony reveals the interactions and competing interests of the Grants and the Smiths. The two families seem to have been more concerned with the worldly aspects of marriage than the implications of the sinful behavior that

³⁴File 44. The confession mentions that they were born in the covenant of grace, so it seems at least one parent of each was a church member. The Watertown church records for this period do not survive, Harold Field Worthley, *An Inventory of the Records of the Particular (Congregational) Churches of Massachusetts Gathered 1620-1805* (Cambridge: Harvard University Press, 1970), 646.

necessitated it. The Grants reasonably assumed that Daniel and Mary were courting and would marry. Her mother tried to prevent her daughter from fornicating but made sure that she could testify that Daniel was spending time suspiciously with her daughter if it became necessary. The Grant family probably welcomed the advantageous marriage for Mary. Daniel Smith was his parents' only surviving child and stood to inherit all his father's £260 estate when his mother died and two-thirds of it if she remarried.³⁵

Unlike the Grants, Elizabeth Smith may not have known how seriously Daniel was pursuing Mary. On one occasion, at least, we know he told her he had gone fishing when he was actually visiting Mary. While the reason Elizabeth Smith opposed the marriage has not survived, it is possible she thought he could do better with his relatively large inheritance. She might not have wanted to lose the labor of her twenty-five year old son and be forced to break up their household, or to have a new daughter-in-law usurp her position. Whatever the reason, the widow Smith reminds us that young men who denied paternity may not have been acting only on their own inclinations but may have been bowing to the pressures and interests of both male and female members of their own families. Thomas Jones, as we will see below, was influenced by his sister who did not want him to marry

³⁵Middlesex County Manuscript Probate Records, Massachusetts State Archives, Boston, 1:245 (hereafter cited as Middlesex Probate).

his lover.

The appearance of family interests in these fornication cases reveals that the changing outlines of fornication prosecution and punishment do not break down simply as being bad for one sex and good for the other. Gender was one factor in determining the outcomes of cases but people of both sexes had interests on both sides of cases. When young men stopped confessing as readily it certainly hurt young women bearing bastards after expecting marriage. But it also hurt the men in those women's families who had hoped for advantageous marriages for their daughters and sisters and now had to help them support a child instead. On the other side, the mothers and sisters of the young men might, like Elizabeth Smith and Thomas Jones's sister, prefer a system that allowed young men to dodge responsibility and avoid making marriages that would not advance the family interests. These types of attitudes demonstrate the agency of individuals in the changes that occurred in Massachusetts society. Earlier Puritans had often put the needs of the community as a whole before the worldly interests of their families. Punishing sin to avoid God's wrath against the community was of paramount importance. As the number of people who put the advantage of their families first increased, behavior that was purely in the interests of the community became less common.³⁶

³⁶Richard P. Gildrie notes the increasing importance of "the civil," people who abided by the letter of the law, *The*

The third Grant to come before the county court for fornication was Christopher Jr., the youngest child. Christopher was presented with Sarah Crouch, in the second of her three appearances for sexual misbehavior. Their stories reiterate some earlier themes and introduce new ones. Although Christopher denied responsibility for Sarah's pregnancy and did not marry her, he did not escape unpleasant consequences. Though Sarah repeatedly appeared in court, she ultimately married and settled down to a normal, if rigorous, life. In addition, family interests appeared as a strong motivation for several of the witnesses.

In the spring of 1668 Sarah Crouch conceived a child whom she later attributed to Christopher Grant, telling magistrates Daniel Gookin and Thomas Danforth that "hee promised her mariage, or else shee had never yeelded to him." Christopher himself had told her that only a rogue would refuse to marry a woman he had gotten pregnant.³⁷ In October of that year, she and another young woman were prosecuted for "wanton cariages with yong men" in her master's house and elsewhere.³⁸ In April of 1669 Sarah and Christopher were

Profane, the Civil, and the Godly: The Reformation of Manners in Orthodox New England, 1679-1749 (University Park: Pennsylvania State University Press, 1994), 3-4, 39-40, and passim. This might be called secular Puritan tribalism, see Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (Boston: 1944; revised ed., New York: Harper and Row, 1966), 161-86.

³⁷Examination of Sarah Crouch, April 6, 1669, file 52.

³⁸File 47.

convicted of fornication. Three women who had attended Sarah's labor testified that "in hir ectremity" she had said that the child was Christopher Grant's.³⁹ While we do not know exactly what punishment Sarah and Christopher received for their crimes, we do know that he was sentenced to be whipped. As table 5.1 shows, whipping was becoming increasingly unusual.

It is possible that, like most women convicted of fornication in the 1660s and 1670s, Sarah's punishment was less severe than Christopher's. Table 5.5 reveals that throughout this period, men's whippings and fines were, on average, more severe than women's.⁴⁰ This contrasts with the facts that in each decade more women were being tried alone for fornication (see table 5.6) and that by the 1670s thirty percent of men named as fathers (see table 5.5) were not convicted of fornication, but only named as reputed fathers. As a result, they received no punishment except that they were required to support their reputed children. And though this did involve a significant financial commitment of £5 4s. to £6 10s. a year, men who confessed suffered punishment as well as being liable to support their children.⁴¹ Thus the figures in table 5.7, which reveal a dramatic decrease in the

³⁹Testimony of Mary Sprague, testimony of Patience Ridland, testimony of Elizabeth Mousall, file 52.

⁴⁰However, as this was Sarah's second appearance before the court, her punishment may have been more severe.

⁴¹For examples of support payments see Pulsifer, 3:196, 3:217.

Table 5.5

Known Punishments for Fornication by Sex of Defendant, 1650-1679

	Whipping	Fine	Choice Fine or Whipping	Support Only	Avg. Fine	Avg. Whipping
1650- 1659						
men (10)	60%	10%	30%	0	60s.	16 str.
women (12)	58%	8%	33%	0	40s.	11 str.
1660- 1669						
men (13)	46% ^a	38%	8%	8%	160s.	18 str.
women (12)	33% ^a	42%	25%	0	109s.	15 str.
1670- 1679						
men (20)	25%	0	45%	30%	125s.	18 str.
women (30)	37%	0	63%	0	99s.	14 str.

^aIncludes couple who were sentenced to both a whipping and a fine. The husband petitioned to have the fine remitted after they were whipped.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court Folio Files.

Table 5.6

Fornication Cases: Frequency for Defendants Tried as Couples or Alone, 1650-1679

	Tried as Couples	Women Alone	Men Alone	Total Cases
1650- 1659	13	1 (7%)	0	14
1660- 1669	25	3 (11%)	0	28
1670- 1679	28 ^a	8 ^b (22%)	0	36

^aIncludes one woman who died in childbirth before sentencing, but after appearing once in court.

^bIncludes one woman whose lover died before appearing in court.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court Folio Files.

Table 5.7

Fornication Cases In Which Men and Women Had Same Punishments, 1650-1679

	Cases with Both Defendants Tried and Known Punishments	No. Same Punishment for Man & Woman	Percentage
1650- 1659	10	6	60%
1660- 1669	9	3	33%
1670- 1679	19	3	16%

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court Folio Files.

number of couples who received the same punishments, reflect these two countervailing tendencies. When men were convicted, they were punished more severely than women.⁴² However, they were prosecuted less and by the 1670s they were convicted less and the court had to fall back on making them the reputed fathers of bastards.⁴³

To return to Christopher Grant and Sarah Crouch, we know from a June 1669 petition his parents sent to the court that Christopher was whipped. In it they referred to Christopher's escape from jail, where he had been placed while his family was trying to get enough money to give bond to make an appeal. Christopher Sr. and Sarah Grant requested that the court "remitt the sentence of Corporall punishment; & accept of Some other satisfaction wheare by law & Justice may be fully Satisfied." So "that yor power [poor] petitioners may be in some hope to regaine theire lost Sonne againe" and "that he may regaine his lost reputation by his Good life and Conversation."⁴⁴ While Christopher had avoided

⁴²This is reflected in premarital fornication cases. In the 1650s, the court gave defendants in 4 of 5 (80%) of this type of case the same punishment; in the 1660s it dropped to 3 of 6 (50%); and in the 1670s it had dropped to 2 of 7 (29%).

⁴³Dayton finds that although New Haven magistrates thought men and women should be punished equally for fornication, men received more severe punishments in the period 1642-1668. She ascribes this to the perceived bodily weakness of women. A large increase in premarital fornication prosecutions and single women without men came in the 1690s, *Women before the Bar*, 176, 188. For men and women having equal responsibility for sexual crimes, see E. William Monter, "Women in Calvinist Geneva (1500-1800)," *Signs* 6 (1981): 189-209.

⁴⁴File 52.

marrying Sarah, the court had not taken his situation lightly. Though the Grant family had tried to disprove some of the particulars of Sarah's story, her evidence and that of others who had seen them together seems to have been convincing.⁴⁵ His case may have been made more serious by Sarah's report of the frequent promises of marriage he made and her testimony that when she told him she was pregnant he told her he "would then Speedly marry" her if she "would make away with ye Child." Sarah refused, adding when she testified, "for which I bless my God."⁴⁶ Sarah's sister testified that he had "meddled" with her and when she threatened to call her father in the next room he boxed her on the ear and said "get yee gon you durti slot now i will goe to youer sister."⁴⁷ The whipping without the option of a fine was likely the result of his flagrant flouting of the rules governing sexual behavior.⁴⁸

Sarah's difficulties in this situation may have resulted from trying to balance two suitors in the spring of 1668.

⁴⁵E.g. testimony of John Mason and Daniel Smith, file 52.

⁴⁶File 52.

⁴⁷Testimony of Mary Crouch, file 52.

⁴⁸In another 1669 case, in which the defendants had married, the sentence had also been whipping without option of fine. It is possible that magistrates returned to whippings briefly as part of their increase of punishment for fornication. Since the court order book was destroyed for this period, not enough records of punishments survive to be sure. See petition of Elizabeth Moore and Mary Maynard, file 51, discussed in chapter 3.

She and Thomas Jones had been courting and Grant seems to have shouldered Jones aside. Grant was probably an attractive suitor, coming from a more prosperous family.⁴⁹ Sarah may have risked pregnancy as a way to ensure marriage with Grant. Perhaps her sexual misbehavior in October of the same year was the result of her disappointment and concern over her pregnancy. To further complicate her predicament, Thomas Jones was one of the witnesses against Grant. After overhearing Christopher and Sarah discuss their sexual relationship, Thomas told Sarah he would have nothing more to do with her.⁵⁰ However, after the birth of Sarah's baby and her conviction, she and Thomas seem to have once more begun to court. Her third appearance in court was the result. In 1670 they were presented by the grand jury for fornication and later in the year they were summoned by the county court to answer for premarital fornication.⁵¹

Sarah's mother's petition to the court requesting mercy describes their courtship, fornication, and marriage. It reveals the popular belief that a marriage contract ameliorated the crime of fornication and highlights the importance of family interests. Sarah and Thomas were probably prosecuted in June of 1671, though Thomas seems to

⁴⁹Compare Christopher Grant Sr.'s 1685 probate inventory of £367 to Thomas Jones's father's 1678 inventory of £80, Middlesex Probate, 6:263-65, 5:1.

⁵⁰Testimony of Sarah Crouch, file 52.

⁵¹Files 53, 58.

have been at sea. Perhaps Sarah Crouch Sr. accompanied her daughter to court. In her petition, she humbly informed the court that Thomas and Sarah "were lawfully published & firmly promised with the consent of their parents 3 months before this ackt was don." She explained that Thomas's sister had been angry about the betrothal and had set his father against him. The elder Jones turned his son out of doors "& would not owne him no more to be his child." Though Thomas and Sarah then decided to be married the next week, her parents convinced them to wait to see if they could get his father's consent. Thomas waited almost three months "& still his father was as oppositt as before." Then the mischief was done: "where uppon Thomas seeinge of it was very much troubled and Caime to our howse & no boddy at home but shee[,] did overcome hir to comitted this fackt." After "he had don it" he was so "troubled in his mynde & with his sisters perswading of him went away to sea." However, once he was in Barbados he was still so troubled that he returned and married Sarah. She finished: "& I his Mother by name Sary Crouch can testify the same & therfore do humbly desire this honnord Court to Consider it for now he is gon to sea againe."⁵²

Goodwife Crouch's primary goal was probably to protect Sarah from a whipping and secondarily to prevent too heavy a fine on the struggling young couple. For this purpose she

⁵²File 56.

pointed out that they had been published and had expected to marry, only waiting out of regard for both their parents' wishes. But she also put the blame for the fornication on the absent Thomas, arguing that he had overcome Sarah in an unspecified way. Whether this was by arguing away her scruples or by raping her, Sarah's mother believed he had the greater responsibility. There is also an unstated rebuke of Thomas for leaving Sarah to face the court alone.

Goodwife Crouch also revealed some of the family interests at play around Sarah and Thomas's relationship. In regard to the families, fornication was an extension of courtship. The interests revolved around the marriage that might result. So Thomas Jones's sister did her best to prevent the marriage, and succeeded in delaying it. Her reasons do not survive, but she may have hoped that Thomas would make a more advantageous marriage. By encouraging a rift between Thomas and his father, she made the marriage less appealing to Sarah's family, who must have feared that the elder Jones would not contribute to the couple's new household.⁵³ By convincing Thomas to go to sea, his sister may have been trying to prevent what actually happened, a pregnancy that would precipitate their marriage. In committing fornication, Thomas (and possibly Sarah) may have

⁵³For marriage negotiations and provisions for young couples see Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1982), 36 and Demos, *A Little Commonwealth*, 159-62.

been playing this trump card when nothing else worked; though Sarah must have feared the punishment she would receive, having already appeared at the court twice. If this was their intent, they succeeded. Thomas must ultimately have been reconciled with his father because in 1678 he was his father's executor and sole heir.⁵⁴

We do not know if the court found Sarah and Thomas's "lawfully published & firmly promised" contract a mitigating factor. A 1641 law gave children the right to complain to authority if they were denied "timely or convenient marriage."⁵⁵ In two other fornication cases betrothal did reduce the punishment of couples guilty of premarital fornication. In 1663 John Roy and his wife "humbly acknowledged their evill & great sin" in committing fornication "& pleaded that ye fact was committed a fortnight after their sollem contract in marriage, & being hindered of mariage, were overcome by the temptacon."⁵⁶ How they were hindered has not survived but their fine of twenty shillings each ranks with the lowest fines paid in this period (see table 5.3). In 1679 George Parmenter and his wife were convicted of fornication but their sentence was respited until the next court so their parents could be summoned to appear "to give answr why they denyed them ye consumation of

⁵⁴Middlesex Probate, 5:1.

⁵⁵Mass. Laws, 1660-1672,, 137.

⁵⁶Pulsifer, 1:285.

their marriage for so many months after they were in order thereto."⁵⁷ No further record of this case was made at the following court and it seems likely that the Parmenters escaped punishment. Here, as in the Jones case, parents had the responsibility to make sure that once young people were contracted to marry they be allowed to marry quickly. While it did not excuse the couple, it reduced their culpability by showing that temptation had unnecessarily been put in their way.

Sarah Crouch Jones's life is a testament to the basic Puritan concept that wrongdoers should be punished and reintegrated into their community. After her three appearances in the Middlesex county court she settled down with Thomas to a difficult but normal life. Her husband went to sea again, then died in 1679, leaving her with five young children and a small estate inventoried at £60, which included a house lot and land.⁵⁸ She remarried soon after and had six children with her new husband. Over the course of her life, the fact that the first two of her dozen children were conceived outside marriage was surely outweighed by her return to the expectations of her community in her two marriages. Though she was excommunicated as a result of her repeated sexual misbehavior, by 1674 her children were being

⁵⁷Pulsifer, 3:299.

⁵⁸Middlesex Probate, 5:296.

baptized in the Charlestown church.⁵⁹

We cannot know why the Grants had so much bastardy in their family, though there are some circumstances that suggest reasons. Christopher Grant Sr.'s prosecutions for tippling and drunkenness may reveal alcoholism that troubled the entire family.⁶⁰ Another or related possibility, given the late dates of marriage or lack of marriage of the Grant children, is that they were not given the resources to marry at the relatively young ages that their peers did and resorted to fornication out of frustration or in hopes that it would hurry their marriages.⁶¹ Abigail was twenty-four or twenty-five when she fornicated with Roger Rose (her peers usually married around twenty-one), Christopher does not seem to have married but was involved in a second fornication case at twenty-nine. Mary was about nineteen but as one of the younger children saw a lot of unmarried older siblings, among them brothers who married at thirty-eight and thirty.⁶² The

⁵⁹Thomas Bellows Wyman, *The Genealogies and Estates of Charlestown, Massachusetts 1629-1818* (Boston, 1879; reprint, Somersworth, NH: New England History Press, 1982), 563, 894.

⁶⁰Pulsifer, 1:127 (April 7, 1657), 1:255 (April 1, 1662).

⁶¹Women tended to marry between twenty and twenty-two, men between twenty-four and twenty-seven, Ulrich, *Good Wives*, 6; Daniel Scott Smith, "The Demographic History of Colonial New England," *Journal of Economic History* 32 (1972): 176-77. Premarital pregnancy was one way eighteenth-century youth controlled their marriages, D'Emilio and Freedman, *Intimate Matters*, 42.

⁶²Of their siblings, Joseph married at thirty-eight, Caleb near thirty, Mercy around twenty-three, and Sarah at twenty-three. Henry Bond, *Genealogies of the Families and Descendants of the Early Settlers of Watertown, Massachusetts*

unusually late marriages may have reflected lean resources, though as one of the early settlers of Watertown, Grant should have been able to provide for his nine children. The £367 value of his inventory when he died in his seventies is consistent with a comfortable remainder after settling his children.⁶³

Returning to some broader questions about fornication in Middlesex county, the large number of equal punishments in the 1650s (sixty percent, see table 5.7) reveal an effort to treat the sexes as equally responsible for the sin of fornication. Therefore, the distinct difference between average punishments of men and women for the decade, found in table 5.5, stand out even more starkly. Four cases showed this unequal distribution of punishment and a corresponding unequal distribution of guilt. The men in these cases were all servants, two of whom were married to someone else.⁶⁴ In the one case where the defendants married, the woman's mistress had ordered the man to stay away from her servant (see chapter 3). This couple was sentenced to a choice of whipping or fine and though his whipping was unspecified, his fine was £3 while hers was £2. A more striking case is frustrating in that few details survive. Unlike any

(Boston, 1855), 260 and Savage, *Genealogical Dictionary*, 2:291.

⁶³Middlesex Probate, 6:263-265.

⁶⁴Three of the men were Scottish and the fourth was African.

defendant until the very end of the 1670s, when the Parmenters seem to have avoided punishment, Mary Goodenow was sentenced to no penalty except to marry James Ross unless she "or her freinds" could "give just reason for her deniall." Scottish servant Ross, on the other hand, was sentenced to be severely whipped with twenty-one lashes as well as being enjoined to marry.⁶⁵ The magistrates may have given the heavy punishment because this was his second appearance before the court. In 1655 he had been sentenced to thirty-nine stripes (the maximum number allowed) for abusing his master and fellow servants.⁶⁶ On the other hand, though the lack of detail makes it impossible to know, it seems credible that the harsh punishment for fornication was the result of his having coerced Mary in some way. That Mary "peremptorily refused to joyne in marriage fellowship" with him makes this seem likely. However, whatever reason she gave for her refusal did not satisfy the court and she was sentenced to ten stripes, a number slightly less than the usual twelve.

The other two men who received greater punishments were married, and so could not make marriage part of the atonement for their sin. Massachusetts law defined adultery as sex with a married or espoused woman. The marital status of the man did not matter in defining the crime, but it may have

⁶⁵Pulsifer, 1:125, 135.

⁶⁶Pulsifer, 1:84-85.

influenced the magistrates in their sentencing.⁶⁷ Another Scottish servant earned a sentence of twenty stripes or the option of paying a £5 fine. The magnitude of his punishment may have resulted from his having a wife in Scotland. His partner received the standard twelve stripes or forty shillings. African Francis Flashego and fourteen-year-old English Hannah Smith were both convicted of fornication even though Hannah testified that she had not consented and had called out to their master's six-year-old daughter. Francis testified that while she had called out, it had been to keep the child from coming into sight. He explained that Hannah had jeered at him because he and his wife had no children. Both stated that she had refused later advances and an offer of money to conceal the crime. Flashego received twenty lashes, while Smith received ten. This may have been because she had not given her explicit consent, or that he was married, or had tried to repeat the offense and bribe Hannah not to testify. The only hint that survives is that their examiner included Francis's marital status twice in his record of their confessions. He remarked that Francis "hath a wife Liveinge with him."⁶⁸

It is striking that from all we can tell, Francis Flashego's punishment had little to do with his race. In the

⁶⁷*The Laws and Liberties of Massachusetts* (1648; reprint, Cambridge: Harvard University Press, 1929), 6.

⁶⁸Pulsifer, 1:64; file 9. Robert Bridge examined Smith and Flashego.

other fornication cases involving people of color, race seems to have been an important determinant in the punishment they received. Table 5.8 shows that for the 1650s and the 1670s, people of color had smaller average punishments than whites. No records of their punishments survive for the 1660s. Three of the four punishments in the 1650s were for six stripes, which seems to have been the standard and was half that for whites. Francis Flashego was the fourth defendant and the aggravating circumstances in his case probably explain his greater punishment. Margaret and Mungery, African servants to Edward Collins, were convicted of premarital fornication. Only their punishment sets them apart from similar white couples. Mungery's petition a year later that his wife's whipping be remitted to a fine was granted and their master promised to pay the twenty shilling fine, which was again half that usual for white defendants. It seems possible that the fact that Elline, "a Pequet Servant," was the only woman tried in the 1650s without mention of a man was because she was an Indian.⁶⁹

⁶⁹Pulsifer, 1:189, 218, 73. No details survive regarding Elline's prosecution.

Table 5.8

Punishment of Fornication Defendants by Race, 1650-1679

<u>No. Defendants/ Avg. No. Stripes/ Avg. Fine in Shillings</u>			
	Indian	African	White
1650- 1659	1/6 stripes	3/11 stripes/20s. ^a	23/14 stripes/45s.
1660- 1669	none	3/unknown	50/17 stripes/131s.
1670- 1679	none	11 ^b /12 stripes/40s.	53/16 stripes/116s.

^aBreakdown: This includes one punishment of 20 stripes and 2 of 6 stripes. The 20 stripes were received by a married man convicted of fornication with a thirteen year old girl who reported that she had said no to him. The other two defendants had committed premarital fornication with each other. The woman's punishment was later remitted to the 20 shilling fine.

^bIncludes a Spanish mulatto with no known punishment.

Sources: David Pulsifer transcript of Middlesex County Court Record Order Books, 1649-1663, 1671-1686; Middlesex County Court Folio Files.

Nothing in the evidence indicates why people of color had lesser punishments. There are several possibilities. Their permanently dependant status may have reflected that they were seen as having less capacity to control their own behavior and were therefore less culpable. Masters who lost time while an African or Indian servant recovered from a whipping could not be reimbursed with time added onto their

indenture, because the Africans, and possibly Elline, were servants for life. It is also possible that there was some understanding that different cultures had different forms of marriage. Finally, the lesser punishments may have suggested the marginalization of these people. Ann Plane has demonstrated that by the early eighteenth century in southern New England people of color were not prosecuted for fornication unless their actions threatened English authority by involving whites.⁷⁰

For magistrates, ministers, and deputies, the significant change in fornication over this period was the dramatic increase they perceived. In 1665, the General Court resolved "a seeming contradiction" between the law regarding allowed punishments and that on fornication. The 1642 law on fornication ordered that it be punished "either by enjoining marriage, or fine, or corporal punishment, or all or any of these, as the Judges . . . shall appoint." The 1641 law on torture ordered that no man was to "be punished with whipping, except he have not otherwise to answer the Law, unles his crime be very shamefull, and his course of life vitious and profligate."⁷¹ Lamenting fornication as a

⁷⁰Ann Marie Plane, "Colonizing the Family: Marriage, Household, and Racial Boundaries in Southeaster New England to 1730" (Ph.D. diss., Brandeis University, 1994), 356-80, 409.

⁷¹*Mass. Records*, 4 (pt. 2):143; *Mass. Laws, 1660-1672*, 33; and *Laws and Liberties*, 50.

"shamefull sin, much increasing among us, to the great dishonor of God & our profession of his holy name," the court declared that the punishment law did not affect the options given magistrates in the fornication law.⁷² The court also ordered that a new punishment be added to the list of options: disenfranchisement of freemen. As discussed above, no punishments are preserved for Middlesex between 1664 and 1668 so we cannot judge from the Middlesex records whether there had been a sudden decrease in punishments. On the other hand, the sentiment behind this law may explain the increase in the magnitude of fines and whippings that occurred in the 1660s. The court's action corresponds with the growing perception of heightened lawlessness in the colony.

Many colonial leaders were horrified by what they perceived as burgeoning misbehavior. In his discussion of the impulse to reform manners in New England, Richard Gildrie notes that concern with backsliding and efforts to reform were an integral part of Puritan society from the beginning of settlement. The trend intensified in the 1660s with the Half-Way Covenant and the perfection of the jeremiad sermon.⁷³ King Philip's war seemed a fulfillment of the dire warnings.

⁷²Mass. Records, 4 (pt. 2):143.

⁷³Richard P. Gildrie, *The Reformation of Manners*, 20-21; Perry Miller, *The New England Mind: From Colony to Province* (Cambridge: Belknap Press, 1953), 27-39; Sacvan Bercovitch, *The American Jeremiad* (Madison: University of Wisconsin Press, 1978), 52-53, 62; and Hall, *Worlds of Wonder*, 172.

Gildrie believes the reform impulse came to flower in the Reforming Synod of 1679. The delegates to the synod advocated the need for renewed piety, effective family government, and a rejection of relentless strivings for wealth.⁷⁴ Viewed from the perspective of the legal system, the synod was a culmination of the redoubled efforts to maintain order and support authority.

The perceived declension did not bring the system of gendered authority or the efficacy of family government into question. Instead colonial leaders believed that the increasing disorder resulted from people who were not suitably controlled by families. Therefore, the General Court took steps to reaffirm the sway of the family as the basic unit of society. In October of 1668 the court decreed that the county courts should send an order to the constable of each town for the enforcement of two long-standing laws. One law directed that selectmen dispose of all single people living in their towns to service or in some other way so that they lived under family government. The second law directed selectmen to ensure that all children and youth living under family government be taught the capital laws and an orthodox catechism, learn to read, and be brought up to an honest profitable employment. The court gave its reason for this reminder and renewed enforcement in the order to be sent to the constables: "The neglect whereof, as by sad experience

⁷⁴Gildrie, *Reformation of Manners*, 24-25, 35-37.

from Court to Court abundantly appeares, doth occasion much Sin and prophanes to encrease among us." The result of allowing people to live outside family government was "the dishonour of God, and the ensnareing of many Children and servants, by the dissolute lives and practices of such as do live from under family Government." Another of the sad consequences of the situation was the "great discouragement to those family Governours who conscientiously endeavour to bring up their youth in all Christian nurture as the Lawes of God and this Common Wealth doth require."⁷⁵

The General Court's commitment to, and faith in, family government was also a commitment to gendered authority, which was fundamental to family government. Families were structures based on gender. Typically a family was formed by a marriage and thus men and women facilitated each other in claiming their own authority in families. Once a household was formed authority rested in both fathers/masters and mothers/mistresses, though in different degrees. Men were the primary family governors, while women were their assistants and deputies.⁷⁶ Once the family had been established, either the husband or wife could carry on when a spouse died. On her husband's death a widow took his place as family governor.

In October of 1668 Middlesex Recorder Thomas Danforth or

⁷⁵Mass. Records, 4 (pt. 2):395-96 (October 14, 1668); file 49.

⁷⁶See Ulrich, *Good Wives* regarding deputy husbands, 36-50.

his clerk sat down with a stack of the first printed forms to appear in the Middlesex county court records. He wrote the name of each Middlesex town at the top and on the bottom the date of the court in Charlestown where the constables were to return information on any individuals living outside family government. Middlesex constables sent the names of thirty-two men to court that November along with statements that various other men were living with families.⁷⁷ Intermittently over the next several years, more men were presented, as towns continued to keep a watch for anyone not living in a family.⁷⁸ Together the General Court, the county court, selectmen, and constables worked to enforce the family as the best way to preserve order in colonial Massachusetts.

The order to the constables also contained a provision "in case of neglect on the part of the family Governours." They were first to be admonished and then if necessary the selectmen and two magistrates or the county court were to remove the children or servants and put them in other families that would take stricter care of them. This concern with the quality of family governors was also revealed by an order at the October 1668 General Court session. The court clarified a law regarding houses of correction. The law ordered that idle persons were to be committed to jail. The

⁷⁷File 49.

⁷⁸E.g. files 50, 51, 53, 59, 61, 62. The last conviction in the 1670s was in 1676, Pulsifer 3:151-52.

court understood "upon good information & sad complaints" that some people "that have families to provide for," instead "greatly neglect their callings or mispend what they earn." As a result, their families were "in much want, & are thereby exposed to suffer & to neede releife from others." The phrase idle persons was now to include "such neglectors of their families" so that they too could be jailed.⁷⁹

Since community, as well as family, was important in the maintenance of social order, the General Court attempted to buttress it too. The court made two laws aimed at strengthening community roles, the bastardy statute and the tithingman law. The bastardy statute of 1668, discussed previously, gave a formal role to the women of the community who came together to attend births. Earlier, midwives and birth attendant's reports of who the woman named as father had probably been enough to help shame a reluctant father into confession. The law gave the mother's accusation and the midwife's testimony to it a new formality and effectiveness. The tithingman law did the same for the role of neighbor.

As noted in chapter 1, a 1677 law prescribed the appointment of tithingmen to watch over neighbors and apprehend Sabbath breakers, tipplers, and family governors who allowed disorder in their houses. The law was

⁷⁹*Mass. Records*, 4 (pt. 2):394-95.

strengthened later in 1677 and again in 1679.⁸⁰ It gave official standing to behavior that earlier in the colony's history would have been considered the normal actions of neighbors. However, it is striking that only male neighbors' roles were directly strengthened by the law. Tithingmen were given authority to inspect houses where drinking, gaming, or other time wasting occurred. They were also "diligently to inspect the manners of all disorderly persons" and to enforce appropriate behavior of both family governors and their dependants. We see the continuity with less formal roles in the court's order that the tithingmen first try "more private admonitions" and only when these failed, to present the miscreants to magistrates or commissioners.⁸¹

The increased concern with the behavior of household heads (family governors) also appeared in the prosecutions of the county court. Transgressions that the magistrates called, among other things, "disorderly living" or "inordinate life" dealt with households that did not run properly. In this type of case the court prosecuted household heads who had lost control of or did not exercise their authority appropriately over their dependents. In the

⁸⁰*Mass. Records*, 5:133, 155, 240-41. See also *The Colonial Laws of Massachusetts. Reprinted from the Edition of 1672, with the Supplements to 1686* (Boston, 1889), 249-50, 257-58, 270-71, 275, 339-41. The position was created in October of 1675 to search for unlicensed houses of entertainment.

⁸¹*Mass. Records*, 5:240-41.

1650s two couples were prosecuted for this crime and culpability was shared by both the husbands and the wives.⁸² From 1659 through 1668 only one court action for this type of situation survives.⁸³ Then beginning in 1669 there were six in seven years, with three prosecuted at a single court in 1674.⁸⁴ In two of the cases the situation had been going on for years with little done until suddenly town or county authorities sought to put it right. The court was taking direct action to shore up the household as a stable unit for maintaining order and training new members of the society.

In two of these cases, Charlestown men were forbidden to dispose of their own property as a result of their neglecting to take care of their families. In 1674 the selectmen informed the county court of "the great difficulty they are from time to time put unto, referring to the governmt & mainetenance of Theophilus March, a blind, & otherwise weake person. & vitiously minded neglecting his family." The court ordered that the selectmen were to have "the dispose and government" of March himself and his estate. He was not to be allowed to sell his house or land without giving security

⁸²Pulsifer, 1:89, 166; file 32.

⁸³Pulsifer, 1:300; file 34.

⁸⁴The one case of the six not described here was against a couple presented for "disorderly living together," file 52 (March 22, 1669). There were also at least three grand jury presentments during this period that were not prosecuted in the county court, files 63 and 67.

for his and his family's maintenance.⁸⁵ The court acted to protect the town from being forced to pay to support the young March family, and perhaps incidentally protected the family from having its home sold.

In a similar case in 1673 the court stepped in at the request of Hannah Salter to prevent her husband Henry from "the unjust sale of her house from over her head, to the putting of her & her children to great extremity." The court accused Henry of living an "inordinate life" and "neglecting his family & mispending his time & estate in a very wicked, & injudicious manner." In her petition Hannah instead emphasized "the weaknesse and Inability of her deare husband" who was in an "unsuitable condition to engage without counsaile In a matter so concernable to their family as to convey away the house wee live in." She declared that she would be silent "would my silence conceale the defects of his understanding which may bee gathered from his deserting his family, his affecting solitary places, his speech and gestures so neer to craziness." Instead she fought to save the house that she had "procured by gods blessing on my owne labors without any mentionable mattr of his asistance." The court ordered that "no bargain, sale, or contract by him made of his household stuff or bills for pymt of money on that

⁸⁵Pulsifer, 3:88-89. The family included his wife Elizabeth and three children. He was tried in Boston in 1673 for killing his three-year-old son. His age is not known but he and Elizabeth Hunt were married in 1665. Wyman, *Charlestown Genealogies*, 655.

account" was to be valid without the selectmen's consent. In addition the selectmen were to provide Salter with honest employment to improve his time.⁸⁶ Hannah Salter was given protection by the court, allowing her to continue to make the best of a difficult situation. Here supporting family government meant curbing a husband's normal rights to dispose of property and thereby enabling his wife to continue to govern and provide for the family herself.

The court also exerted itself to control the way family governors dealt with children and servants. When the grand jury presented Thomas Dickerman in 1676 for neglect of family government, he bound out his daughter "whose miscarriage was the cause of ye complt." On his appearance before the county court he was discharged because the problem had been resolved.⁸⁷ Two other men were not as cooperative, as the following stories show.

In 1674 Samuel Dunton of Reading was convicted of "bringing up his family of children, in a very rude irreligious, prophane, and barbarous manner, contrary to the word of God, and the lawes of this commonwealth."⁸⁸ The Duntons and their eight children were repeatedly absent from Sunday services. When the grand juryman went to their house

⁸⁶Pulsifer, 3:80; file 62. Hannah was about forty. Henry's age is unknown. Wyman, *Charlestown Genealogies*, 842.

⁸⁷Pulsifer, 3:160.

⁸⁸Pulsifer, 3:87-88.

to find out why, Samuel answered that they did not have enough clothes. Asked why he did not put his children out to service if he could not provide them clothes, Dunton answered that he wanted to but his wife would not let him. On another visit at meeting time on a Sunday in early October, while still at a distance from the house, the constable and grand juryman "herd such a noyse of Laughing & Talking as if the[y] were att som sport." When they arrived at the house they found the children wearing very little clothing. Elizabeth Dunton had "nver a Coat one her, & it was hard to deserne whether or noe shee had Any shifte one." The visitors asked "was shee not Ashamed to bee in such a poster [posture]; her answer that "shee knew noe hurte in itt" showed her parents' shocking negligence in their children's education. The constable and grand juryman testified that they did not think fifteen or sixteen-year-old Elizabeth had been to church ten times in her life. They could find no books or other evidence that the family did anything to improve the Sabbath or educate their children.⁸⁹

Though Samuel Dunton was alone in being convicted at the court, the grand jury did not see him as the only culpable party. They also presented his wife "for not subgecting to her husband," presumably for not allowing him to bind out their children. Nor did the evidence that the family had

⁸⁹Testimony of Ralph Dix and Sergeant Damon, April 7, 1674, file 68.

long been living in a disorderly way escape the grand jury. They presented the selectmen of Reading "for there neglect of duty in not looking after the family of Samuelldonton as the law Requires of them."⁹⁰ Both parents and town authorities had been neglectful. The duration of the situation in the Dunton family and in the Parker family discussed below reveals that authorities were taking a new interest in a problem that had been allowed to lapse for a number of years. Having convicted Dunton, the court ordered the selectmen to dispose of his children to service and Dunton to pay the costs of court. The court added that in case the selectmen "were obstructed herein throw the refractorines, & stubbornes in Parents or children, they are to informe the court . . . who will proceed with them according to law, by comitting them to the house of correccion, untill they will learne to submitt themselves."⁹¹ Dunton's inability to keep his children clothed was probably the crowning reason that they were put out to service while, at the same court session, Edmund Parker was only threatened with that result.

Edmund Parker of Lancaster and his son Abraham were presented by the grand jury in October of 1673 "for there great neglect in not Comming to" meeting on Sundays.⁹² In

⁹⁰October 7, 1673, grand jury presentment, file 67.

⁹¹Pulsifer, 3:87-88.

⁹²October 7, 1673, grand jury presentment, file 67.

December the town petitioned the county court for help in dealing with him. The following April, when father and son appeared at the court to answer the charge, the court also received a letter from the "townsmen" of Lancaster who "in faithfullnes to our neighbour Parkers soule and body both doe Count it their dutie to give sum informacion" regarding the Parker family. They had tried to make Parker reform but "theire indevors at home hath bene fruitlese, And they wearied out with pevish froward provoking expresions when they have laboured to perswade him to put himselfe and family into a more Comfortable way of living." Lamenting "how uncomfortably the pore man Lives . . . in Respect of food Cloathing and Lodging," they assured the court that he had considerable land and cattle, besides his strong son's labor. The only burden he had, which he had "needlesly and indiscreetly brought upon himselfe," was his daughter and "her bastard child," whom he had taken in "forcibly against the towns order."⁹³

Of great concern to both the Lancaster citizens and the county court was Abraham Parker's upbringing. The twenty-year-old had rarely attended church in several years; nor had his father. The townsmen "from time to time hath Labored with him in Reference to his son to gett him sum Learning and to bring him up to sum honest implyment acording as the Law

⁹³Letter of Lancaster townsmen, April 4, 1674, file 68. The child's father was an African servant living in Roxbury.

provids" and to "send him forth to publique Catichising" or to allow the selectmen to do it, "but nothing would prevaile with him." When talking did no good "the grand Jurie man did informe the said Parker that If he did not Reforme his not coming to meeting he must present him but he did not Reforme neither hath bene at meeting never since the Last Court." The townsmen reported that all their efforts had been in vain and that Parker had "wearied them out."⁹⁴ The county court brought relief to the townsmen. It admonished Parker and his family and ordered the selectmen to inspect the family. If they did not find improvement there, Abraham was to be put to service "where he may be better taught & governed." If "throw the stubbornes of father or sonne" they were not allowed to, the court would take further action.⁹⁵

The Parker case paints nicely the progression followed in dealing with misbehavior in general and disorderly living in particular. The first responsibility to educate and control children and servants lay with the family governor. If he (or she) failed, then the community stepped in beginning, perhaps, with less formal efforts and ending with the threat of the grand juryman that he would take the matter to court.⁹⁶ Finally the court itself supported the community

⁹⁴Letter of Lancaster townsmen, April 4, 1674, file 68; petition of Lancaster townsmen, December 13, 1673, file 62.

⁹⁵Pulsifer, 3:88. The court did not take any additional action through 1679.

⁹⁶Women could be prosecuted as well. In 1679 Widow Arrington's children were placed out to service when she was

and town government by applying its coercive power with the threat of breaking apart the family if it did not reform. This progression shows the way that families, communities, local government, and county court were connected. Families and communities provided the informal authority that ideally supported the formal powers of governments and court. For at least a decade after 1668 the government and courts continuously reiterated their commitment to buttress both the family and the community.

Viewed from the perspective of the prosecution of family governors, the need for the tithingman law becomes apparent. The law filled two needs. On the one hand it confronted the neglect of community members and town officials, like those in Reading, to regulate families like the Duntons. On the other hand, in communities like Lancaster, where the townsmen had repeatedly tried to reform the Parker family, it gave official power to particular community members to regulate their neighbors.

Middlesex leaders did not easily give up their concept of an ordered society. As they perceived sin becoming more prevalent, they emphatically reiterated the gendered structures of family and community to combat it. This chapter has considered fornication as an example of a sin

convicted of entertaining idle and rude persons, Pulsifer 3:290.

that troubled Middlesex inhabitants. In reaction to its increase, magistrates punished it more severely. In response to the increasing numbers of men who were getting away with the crime the General Court established a law intended to assure maintenance of bastard children. However, leaders were not able to halt the trend or to prevent the increasing burden of the crime on women and their families. The fornication cases also remind us of the ways in which the actions of Middlesex inhabitants were imbedded in their communities and families. The young men trying to escape the consequences of their actions did not act in a vacuum. They had to deal with neighbors who saw their behavior: both inappropriate intimacy and appropriate courtship-like behavior. They also had to explain their behavior to other members of their households and communities. Finally, they could expect importunities from members of their own and their partner's families: both to make right their actions by marrying and to avoid making alliances that were not in their best interests.

Through actions and laws the General Court tried both to strengthen the family as the basic unit for maintaining order and to buttress community roles by giving the actions of midwives and neighbors (as tithingmen) new formality. The county court worked to reform ineffective or negligent family governors. It called on parents, masters, and mistresses to halt the decay. Many of the people of Middlesex responded by working to support order and fight sin from within their

families and communities, continuing the informal roles people had played since the beginning of the colony. Community members also accepted new responsibilities as grand jurymen looking for young men living outside families, as midwives and skillful women witnessing testimony about fathers and searching young women, and as tithingmen seeking to ensure the sanctity of the Sabbath and the reduction of uncontrolled drinking and merry-making. But more and more of them also found the pull of conflicting interests compelling. Sometimes they put their family or self-interest above that of the community. From the beginning of settlement, community ideals had not been fully met, but lapses occurred more and more often.

Though the courts attempted to buttress families and give new formality to some community roles, it is marked that they did not use their authority to buttress other less formal roles, particularly those of women. While laws enforcing family government reinforced women's authority, when the courts attempted to put their power behind neighborly watching, men received their endorsements as tithingmen, as selectmen, and as grand jurymen. Outside the specialized realm of the birthing room and the searching of women's bodies, the courts made no direct effort to support women's community roles. In the English system of order, only men could be government officials. As authority began to rely more heavily on official status, there was no method, consistent with the concepts of gendered authority, whereby

women's broad community authority could be enforced. So constrictions on women's neighborly authority may have continued unchecked as some inhabitants watched a little less carefully or advocated the renunciation of sin a little less fiercely.

Conclusion

Sarah Crouch Sr., Magistrate Daniel Gookin, Sarah Bucknam, Mrs. Susan Johnson and her husband Captain Edward Johnson, Christopher Grant, Elizabeth Read, and Pombassawa Indian. Order in Middlesex was maintained and challenged by people. In the middle of the seventeenth-century, control was exercised on a continuum that stretched from the household, through the community, and into the courts. Connections between the county court and people's everyday lives appear throughout the records. While white men were predominant in the county court, in the community they shared space with women and people of color. And all community members could contribute to solving conflicts and controlling behavior. People looked to neighbors to support them in times of trouble. The same neighbors watched and judged each other's behavior and tried to stop wrongdoing.

White middle-aged and middle-status women shared household and community authority with men. While always subject to their husbands, women held a number of formal and informal roles. As mothers and mistresses they regulated the dependents in their households. In the community their authority included neighborly watching and acting as skillful women and midwives. Their oversight of sexuality and servants meant, as I discuss in chapter 3, that they could

act as agents of colonial power over people of color. But the abuse Bridget Squire and Mary Draper received from their husbands highlights the vulnerability of women, as well as other dependents, in a patriarchal household.

Everyday authority in communities was constantly challenged and affirmed through the actions of community members. However, it could be damaged to the point where it could no longer function effectively. This was the case in Malden and Woburn. Disagreements among town leaders, or between them and colony leaders, weakened the everyday authority of ordinary people in their neighborhoods. The re-establishment of order in these towns resulted from the efforts of people at all levels of authority: court, town government, and community.

In chapter 5 I adjust the relatively static picture I have painted of the way authority worked in Middlesex. The reaction of the colony government and courts to the increase of "sin and prophanes" they perceived was to fight back with greater punishments, new laws, and the revitalized enforcement of some old laws. When the number of fornication cases increased, the punishment of the crime increased as well. The reassertion of gendered authority emphasized family government, which gave a large role to women. But when the role of male neighbor was reified in the new office of tithingman and the courts depended on constables, selectmen, and grand jurymen to enforce laws, an unintentional result may have been the beginnings of a loss in importance

of women's community authority.

In focusing on cases where the community or women have had an important role in the regulation of behavior, I have left out to a great extent the religious disputes of the 1660s and 1670s. Again and again members of a group of Baptists appeared in court for not attending services. Several women were prominent among this group, appearing with their husbands or alone. A higher proportion of women were defendants in religious crimes than in any other crime except fornication during this period. This suggests that while women's authority in neighborhood communities may have been beginning to decrease, women in religious sects might have been finding an alternative venue for authority and agency, just as their Puritan mothers and grandmothers had done.

This dissertation is the first stage of an examination of everyday authority in Middlesex County. The changes hinted at in chapter 5 continued and accelerated with profound effects on the maintenance of social order. In following Middlesex County into the eighteenth century, the challenge will be to continue to focus on the lives of everyday communities as they increasingly diverge from the actions of the county court. Judging from the work of historians like Cornelia Hughes Dayton, Laurel Thatcher Ulrich, and Susan Juster, the decreased influence and presence of women in courts reflected a somewhat diminished community authority, but women continued to hold authority, varying greatly by both time and place, over the next two

centuries.¹

¹Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995); Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* (New York: Alfred A. Knopf, 1990); and Juster, *Disorderly Women: Sexual Politics and Evangelicalism in Revolutionary New England* (Ithaca: Cornell University Press, 1994).

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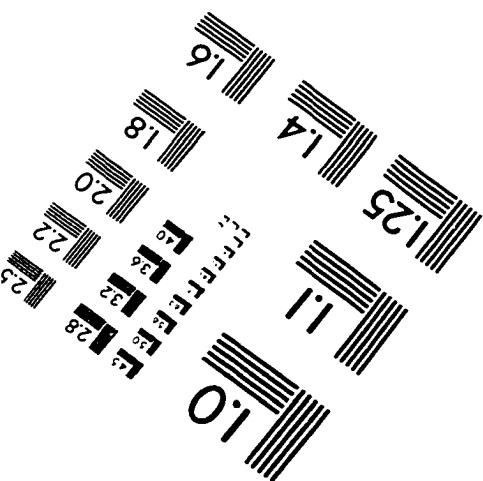
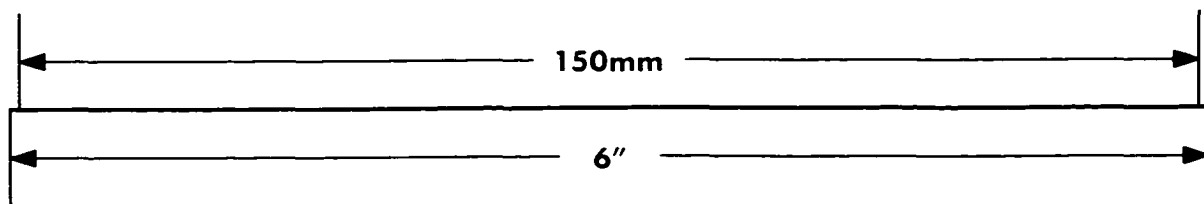
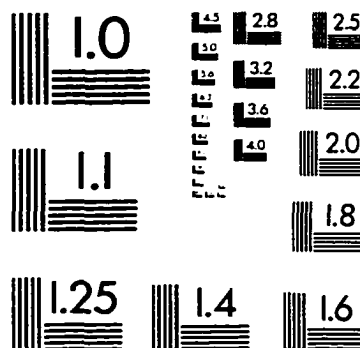
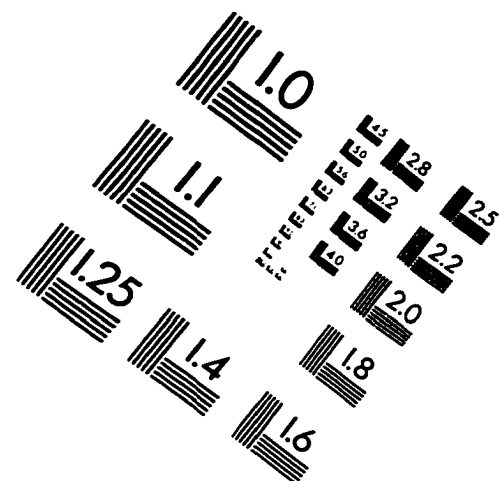
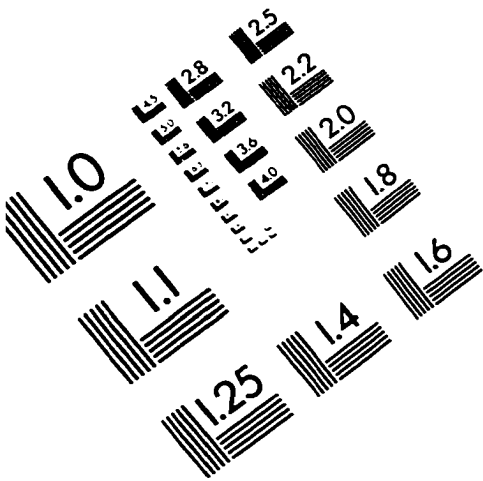
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